

1 Philip Christian Bikle  
2 1616 South Varna Street  
3 Anaheim, California [92804]  
4 Phone: (301) 802-9953

5 Appellant in Pro Per

R E C E I V E D  
MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

MAR 07 2014

FILED \_\_\_\_\_  
DOCKETED \_\_\_\_\_  
DATE \_\_\_\_\_ INITIAL \_\_\_\_\_

8 UNITED STATES COURT OF APPEALS  
9 FOR THE NINTH CIRCUIT

10  
11 Philip C. Bikle ) Case No. 13-56504  
12 Plaintiff - Appellant, ) D.C. No. 8:13-cv-00911-DOC-JPR  
13 v. )  
14 Doe1-9, in individual capacities; ) APPEAL  
15 Traffic supervisor, "Martha", in her individual capacity; ) APPELLANT'S BRIEF  
16 Commissioner Michael Pearce, in his individual capacity;) )  
17 Judge Deborah Sanchez, in her individual capacity; )  
18 Superior Court of the State of California at Bellflower; )  
19 Defendants )  
20  
21

## TABLE OF CONTENTS

STATEMENT OF THE CASE.....	6
Nature of the Proceeding.....	6
Notice of Appeal.....	6
Jurisdiction.....	6
Nature of the Judgment.....	7
Questions Presented.....	7
Summary of Argument.....	9
Summary of Facts.....	11
ASSIGNMENT OF ERROR.....	22
Argument.....	27
I. Statutory and State Constitutional Analysis.....	28
II. Federal Law Analysis .....	44
CONCLUSION.....	53
ADDENDUM.....	54

### CONSTITUTIONAL PROVISIONS AND STATUTES

United States Constitution, Amendment V .....	10, 11, 25, 30, 54
United States Constitution, Amendment VI.....	6, 10, 11, 25, 54
United States Constitution, Amendment XIV.....	6, 10, 11, 25, 55

### CALIFORNIA CONSTITUTIONAL PROVISIONS AND STATUTES

1		
2	California Constitution, article III, section 3.....	10, 34, 55
3	California Constitution, article V, section 13.....	29, 55
4	California Government Code § 22.....	44, 56
5	California Government Code § 26500.....	42, 56
6	California Government Code § 26502.....	42, 57
7	California Penal Code § 17(d).....	35, 57
8	California Penal Code § 19.....	9, 57
9	California Penal Code § 691(c).....	41, 57
10	California Penal Code § 691(d).....	7, 8, 58
11	California Penal Code § 740.....	42, 58
12	California Penal Code § 853.9.....	42, 58
13	California Penal Code § 949.....	43, 59
14	California Penal Code § 950.....	43, 60
15	<b>California Penal Code § 952.....</b>	<b>43, 60</b>
16	California Penal Code § 959.....	43, 61, 62
17	California Vehicle Code § 40513.....	8, 42, 65
18	Certificate of Compliance with type-volume limitation, typeface requirements,	
19	and type style requirements.....	67
20	<b>APPENDIX</b>	
21	Dismissal Order.....	68

1                   **TABLE OF AUTHORITIES**

2                   **CASES**

3	Ashelman v. Pope, 793 F.2d 1072, 1075 (9th Cir. 1986).....	23
4	Bradley v. Fisher, 13 Wall. 335, 20 L.Ed. 646 (1872).....	23, 44, 45, 47, 49, 51
5	City of San Diego v. Municipal Court, 102 Cal. App.3d 775, at 778,	
6	162 Cal. Rptr. 420 (1980).....	35
7	Davis v. Municipal Court, 46 Cal.3d 64 at 77, 249 Cal. Rptr. 300, 757,	
8	P.2d 11 (1988).....	33, 38
9	Dix v. Superior Court, 53 Cal.3d 442 at 451, 279 Cal. Rptr. 834,	
10	807 P.2d 1063 (1991).....	10, 33, 37, 40
11	Esteybar v. Municipal Court, 5 Cal.3d 119 at 127, 95 Cal. Rptr. 524,	
12	485 P.2d 1140 (1971).....	33
13	Heldt v. Municipal Court, 163 Cal. App.3d 532 (1985).....	35
14	Hicks v. Board of Supervisors, 53 Cal. App.3d 228, at 240-241,	
15	138 Cal. Rptr. 101 (1977).....	35
16	Jones v. Superior Court, 96 Cal. App.3d 390, 157 Cal. Rptr. 809 (1979).....	35
17	Mullis v. United States Bankruptcy Court, 828 F.2d 1385,	
18	1389 (9th Cir.1987).....	24
19	Municipal Court v. Superior Court, (Gonzalez) 5 Cal. 4th 1126 at 1131,	
20	22 Cal. Rptr. 2d 504, 857 P.2d 325 (1993).....	35
21	People v. Carlucci, 23 Cal. 3d 249, 590 P.2d 15 (1979).....	22, 28

1	People v. Municipal Court, (Pellegrino) 27 Cal. App.3d 193 at 200,	
2	103 Cal. Rptr. 645 (1972).....	34, 35
3	People v. Smith, 53 Cal. App.3d 655, at 659-660, 126 Cal. Rptr. 195 (1975)..	34, 35
4	People v. Stapf, 28 Cal. App. 4th 1756, 34 Cal. Rptr. 2d 351 (1994).....	23, 31, 32
5	People v. Wallace, 169 Cal. App.3d at 406, 215 Cal. Rptr. 203 (1985).....	33
6	Ralph v. Police Court, 84 Cal. App. 2d 257 (1948).....	30
7	Rodriquez v. Solis, 1 Cal. App.4th 495, 501-502 (1991).....	36
8	Rankin v. Howard, 633 F.2d 844 (9th Cir. 1980).....	47
9	Serna v. Superior Court, 40 Cal.3d 239, 254, 219 Cal. Rptr. 420,	
10	707 P.2d 793 (1985).....	35
11	State of California v. Superior Court, 12 Cal.3d 237, 247 (1974).....	36
12	Stump v. Sparkman, 435 U.S. 349, 356, 357 (1978).....	23, 49, 51, 52
13		
14		
15		

16

17

18

19

20

21

## **APPELLANT'S BRIEF**

## **STATEMENT OF THE CASE**

### **Jurisdiction**

Bikle brought this action before the United States District Court pursuant to 42 U.S.C. §1983, §1985, §1986 and the Fourth, Sixth and Fourteenth Amendments to the United States Constitution and this jurisdiction is founded upon 28 U.S.C. §1331 and §1343(a) (3) and (4). Bikle furthermore invoked the supplemental jurisdiction of the aforementioned Court pursuant to 28 U.S.C. §1367(a) to hear and decide claims arising under State law.

Jurisdiction of this Court of Appeals is invoked under Section 1291, Title 28, United States Code, as an appeal from a final judgment of dismissal with prejudice, on July 24, 2013, in the United States District Court for the Central District Court of California, in Santa Ana. Notice of appeal was timely filed, on August 22, 2013, in accordance with Rule 4(a)(1)(A) of the Federal Rules of Appellate Procedure.

### **Nature of the Proceeding**

This is a civil case in which the Appellant, Philip Christian Bikle, appeals the judgement of dismissal with prejudice, pursuant to screening of a complaint under 28 U.S.C. § 1915(e)(2).

1 A copy of the complaint was provided to the District Clerk in order to allow  
2 compliance with F.R.A.P. (11)(b)(2).

3 **Nature of the Judgment**

4 The trial court found that Bikle's complaint against Defendants failed to state  
5 a claim upon which relief may be granted, that it was frivolous, and that all of the  
6 Defendants were absolutely immune from suits for damages regarding actions  
7 allegedly taken within their capacity as judges or court employees. Furthermore,  
8 the trial court found that the entirety of the complaint addresses actions taken by  
9 judges and other court staff in the course of their judicial duties. Bikle's request for  
10 an injunction was dismissed, in addition to charges of conspiracy to deprive Bikle  
11 of his due process rights and state-law tort claims under supplemental jurisdiction  
12 were dismissed.

13 A copy of the order dismissing the complaint with prejudice is attached at  
14 the end of this brief.

15 **Questions Presented**

16 1) A notice to appear is signed by Bikle, under duress, and a peace  
17 officer. The latter, who does not dually hold one of the titles listed in California  
18 Penal Code § 691(d), subsequently files an altered duplicate notice to appear with a  
19 court clerk in a Superior Court in the State of California at Bellflower. Does this  
20 court clerk have the authority to initiate the prosecution of criminal causes of  
21

1 action on behalf of the People of the State of California under California Vehicle  
2 Code § 40513(b)?

3       2) Assuming (1) is answered in the affirmative, can the court clerk  
4 initiate the prosecution of criminal causes of action on behalf of the People of the  
5 State of California without the clear agreement of an individual who holds one of  
6 the titles included in California Penal Code § 691(d)?

7       3) Does a notice to appear, which lacks the signature of a prosecuting  
8 attorney and their clear intent to initiate prosecution, constitute a case on behalf of  
9 the People of the State of California?

10      4) Assuming (1) or (2) or (3) are answered in the negative, did the  
11 Superior Court of California at Bellflower have subject-matter jurisdiction over a  
12 criminal proceeding involving Bikle?

13      5) Does the notice to appear issued by the peace officer to Bikle, which  
14 lacks both a signature by an authorized prosecuting authority-as mentioned in

15 California Penal Code § 691(d) and a signature by either a judge or a clerk,  
16 constitute a properly served summons?

17      6) Bikle only made special appearances before the Superior Court at  
18 Bellflower. All of Bikle's oral arguments challenged jurisdictional deficiencies. In  
19 addition, the jurisdictional deficiencies were challenged in filed motions to quash  
20 and dismiss, which also made note of Bikle's special appearances to challenge  
21 jurisdiction. Did the Superior Court at Bellflower acquire in personam jurisdiction

1 over Bikle as a result of his special appearances and arguments that attacked the  
2 Court's lack of jurisdiction?

3           7) Assuming (4) or (5) or (6) are answered in the negative, have any of  
4 the defendant employees of the Superior Court at Bellflower acted clearly absent  
5 all jurisdiction while creating a criminal proceeding, scheduling an arraignment  
6 date, and holding repeated arraignment proceedings against Bikle?

7           8) Assuming (7) is answered in the affirmative, can absolute immunity  
8 be granted to any of the defendants who acted clearly absent all jurisdiction?

9        9) Assuming (8) is answered in the negative, is Bikle entitled to money  
10 damages, upon a showing of cause, from any of the defendants who can not be  
11 granted absolute immunity?

12           10) Assuming (9) is answered in the affirmative, is Bikle's complaint  
13 frivolous?

## **Summary of Argument**

Bikle was given a notice to appear by a peace officer. This peace officer filed the notice to appear with a clerk at the Superior Court of California at Bellflower. A clerk then decided to initiate criminal prosecution and initiated criminal proceedings with misdemeanor and infraction charges. Bikle was facing six months in jail and a \$1000 fine. See Cal. Pen. Code § 19. This clerk is a member of the judicial branch. The discretion to initiate criminal prosecution is vested in the executive branch with a prosecuting attorney. It was a **violation of due process**

1 and the separation of powers for the clerk to have decided to initiate criminal  
2 prosecution against Bikle. See Dix v. Superior Court, 53 Cal.3d 442 at 451, 279  
3 Cal. Rptr. 834, 807 P.2d 1063 (1991); see United States Constitution, Amendments  
4 Fifth, Fourteenth; see also California Constitution, article III, section 3.

5 Bikle made five special appearances at the Superior Court. Bikle filed  
6 motions to quash and dismiss then attempted to hold a hearing in open court on a  
7 proposed date, over a month later. All of Bikle's written motions attacked the  
8 judges lack of jurisdiction. All of Bikle's oral arguments attacked the judges lack of  
9 jurisdiction. The court record did not have a verified complaint signed by a  
10 prosecuting attorney, nor did it have a proof of service of a complaint and a  
11 summons signed by either, a judge or a court clerk, and the prosecuting attorney.  
12 Bikle was forced to appear, each time, under threat of issuance of a warrant and  
13 arrest. Bikle attempted to address the lack of jurisdiction at a scheduled hearing  
14 which the court failed to properly schedule and which traffic supervisor "Martha"  
15 alleged Bikle failed to appear for; however, Bikle did appear at court only to find

16 that he had not been scheduled as requested. Commissioner Michael Pearce  
17 attempted to elicit a plea to the alleged charges, although the court record  
18 contained Bikle's to separate motions which attacked the lack of jurisdiction. Judge  
19 Sanchez ignored Bikle's oral arguments regarding the lack of jurisdiction, refused  
20 to rule on a motion to dismiss which attacked the lack of jurisdiction, and  
21 repeatedly attempted to coerce a plea to the alleged charges. All of the Defendants  
did knowingly act without jurisdiction. The judges attempted to elicit a plea

1 without notifying Bikle of the right to have assistance of counsel thus depriving  
2 Bikle of due process. Furthermore, Judge Sanchez attempted to compel Bikle to be  
3 a witness against himself, on multiple occasions. See United States Constitution,  
4 Amendments Fifth, Sixth, Fourteenth.

### 5                   **Summary of Facts**

6                   The following is a subset of the alleged facts from the original complaint.  
7 Bikle requests that all of the alleged facts be taken into consideration with this  
8 appeal; however, this subset pertains to the core issues on appeal, to wit:

9                   15. Court employee Doe1, filed the notice to appear, Y214682,  
10                  as a criminal complaint, on an unknown date and time, in  
11                  between January 1, 2012 and February 27, 2012.

12                  16. The notice to appear was signed by Officer A. Santos, of the  
13                  Los Angeles Sheriff's Department, at Lakewood Station.

14                  17. Officer Santos is not licensed to practice law.

15                  18. Officer Santos is not authorized, by California law, to  
16                  initiate criminal prosecution in the name of the People of the  
17                  State of California.

18                  19. Doe1 caused a notice to be mailed to Plaintiff on February  
19                  27, 2012 which indicated that a mandatory appearance was  
20                  required.

1           20. On April 25, 2012 Document #2001, an informal request for  
2 discovery to the District Attorney's office at Bellflower, was  
3 delivered via USPS (Delivery confirmation receipt  
4 #03102640000013550554).

5           21. On May 3, 2012 Bikle filed Document #1000 Version 1.000  
6 titled, "Motion to quash for lack of a Verified Complaint".

7           22. Bikle proposed a venue to the Court of June 6, 2012, at  
8 1:00PM, in Department 001.

9           23. A court employee, Doe2, failed to schedule an appearance  
10 date for Document #1000 Version 1.000.

11           24. If Doe2 scheduled an appearance date for Document #1000  
12 Version 1.000, then Doe2 failed to provide Notice to Bikle.

13           25. On May 3, 2012 Bikle filed Document #1001 Version 1.000  
14 titled, "Motion to dismiss on the grounds that the Peace Officer  
15 and Clerk of Court are practicing law without a license"

16           26. Bikle proposed a venue to the Court of June 6, 2012, at  
17 1:00PM, in Department 001.

18           27. A court employee, Doe3, failed to schedule an appearance  
19 date for Document #1001 Version 1.000.

20           28. If Doe3 scheduled an appearance date for Document #1001  
21 Version 1.000, then Doe3 failed to provide Notice to Bikle.

1           29. On May 11, 2012 Document #2002, an informal request for  
2 discovery, was hand delivered to the District Attorney's Office  
3 at Bellflower.

4           30. On May 11, 2012 Bikle filed Document #1000 Version  
5 1.001 titled, "Motion to quash for lack of a Verified Complaint".

6           31. Bikle proposed a venue to the Court of June 6, 2012, at  
7 1:00PM, in Department 001.

8           32. A court employee, Doe4, failed to schedule an appearance  
9 date for Document #1000 Version 1.001.

10          33. If Doe4 scheduled an appearance date for Document #1000  
11 Version 1.001, then Doe4 failed to provide Notice to Bikle.

12          34. On May 11, 2012 Bikle filed Document #1001 Version  
13 1.001 titled, "Motion to dismiss on the grounds that the Peace  
14 Officer and Clerk of Court are practicing law without a license".

15          35. Bikle proposed a venue to the Court of June 6, 2012, at

16 1:00PM, in Department 001.

17          36. A court employee, Doe5, failed to schedule an appearance  
18 date for Document #1001 Version 1.001.

19          37. If Doe5 scheduled an appearance date for Document #1001  
20 Version 1.001, then Doe5 failed to provide Notice to Bikle.

21          38. On June 1st, 2012 Bikle attempted to file a peremptory  
challenge against Commissioner Michael Pearce. A female

court employee, Doe6, refused to file my peremptory challenge around 2:20pm.

39. Bikle made an appearance at Bellflower Courthouse on June 6, 2012. Bikle did not find his name on the list of scheduled appearances posted outside of Department 001. Bikle filed 1 original written peremptory challenge with the Bellflower Courthouse and Bikle kept 1 original written peremptory challenge that had been stamped as received by the court, on June 6, 2012, before the proposed hearing time of 1:00PM, as Bikle did not know if a hearing would be held since two separate Deputy Clerks of Court had specifically told him that they did not have him scheduled for any thing other than an arraignment on August 1, 2012. Bikle was told by the first Deputy Clerk that he could go into Department 001 but that he would not be heard with out being scheduled.

40. On June 7, 2012 Traffic Supervisor "Martha" issued process in the form of a "correspondence inquiry" to Commissioner Michael Pearce.

41. This correspondence inquiry indicates that the Plaintiff was requesting "motion to quash & hearing for 6-6-12". The correspondence inquiry did not indicate that Plaintiff had provided a stipulation to have his matters heard before

1 Commissioner Pearce. In addition, there was no mention of  
2 Plaintiff's motion to dismiss on the grounds that the Peace  
3 Officer and Clerk of Court were practicing law with out a  
4 license. Martha indicated that the alleged defendant failed to  
5 appear on June 6, 2012. The correspondence inquiry also  
6 indicates that Commissioner Pearce denied the motion to quash  
7 on June 7, 2012.

8 44. On June 11, 2012 Document #2005, notice of peremptory  
9 challenge was mailed to the Bellflower District Attorney's  
10 office.

11 45. On June 27, 2012 Document #1007v1.001, was mailed to  
12 the Bellflower District Attorney's office (Delivery confirmation  
13 receipt #70101870000123965129).

14 46. On June 29, 2012 Document #2003, a third informal request  
15 for discovery to the District Attorney's office at Bellflower, was

16 delivered via United States Postal Service(USPS) (Delivery  
17 confirmation receipt #70111150000130464075).

18 50. On July 18, 2012 Document #2006, a fourth informal  
19 request for discovery to the District Attorney's office at  
20 Bellflower, was delivered via United States Postal Service  
21 (USPS) (Delivery confirmation receipt  
#70111150000130464112).

1           51. On July 27, 2012 Document #1007, a notice of a motion to  
2           compel discovery was served on the District Attorney's office at  
3           Bellflower via USPS (Delivery confirmation receipt  
4           #70101870000123965136).

5           52. On August 1, 2012, Bikle appeared at Bellflower  
6           Courthouse, 1PM, in department 001.

7           53. At this time, Commissioner Pearce failed to produce the  
8           peremptory challenge, described earlier, from the case file.

9           54. Doe8 did one of the following things to the peremptory  
10          challenge, which resulted in Pearce's failure to produce the filed  
11          peremptory challenge: Steal, remove, or secrete; Destroy,  
12          mutilate, or deface; Alter or falsify. Bikle does not currently  
13          have enough facts to determine which of the listed actions  
14          occurred to result in the absence of the peremptory challenge  
15          from the case file, but it is clear that one of the actions must

16          have taken place, as the record could not be found.

17          55. On August 1, 2012 Bikle appeared at Bellflower  
18          Courthouse, in Department 006. This appearance was the result  
19          of disqualifying Commissioner Pearce. Before Bikle's case file  
20          was transferred from Department 001 Bikle had a discussion  
21          with Judge Sanchez, which was not on the record. During this  
              discussion Bikle indicated concern about getting a ruling on the

1 motion to dismiss and that the motion to quash denial was done  
2 with out authority. When Bikle's case file arrived Judge  
3 Sanchez excused herself so that she could read over it. She  
4 came back within 20 minutes, at which point the record started.

5 56. Bikle was exhausted due to only getting about 5 hours of  
6 sleep the night before as a result of anxiety and pain. Bikle was  
7 also in extreme pain at this appearance.

8 57. Judge Sanchez immediately asked if Bikle wanted to plead  
9 not guilty when the record started.

10 58. Judge Sanchez did not rule on the Document #1001 Version  
11 1.001 titled, "Motion to dismiss on the grounds that the Peace  
12 Officer and Clerk of Court are practicing law without a license"  
13 before jumping ahead to ask for a plea. Judge Sanchez did not  
14 rule on the Document #1001 Version 1.001 during the first,  
15 second, third, or fourth appearances of Bikle.

16 59. On August 1, 2012 Bikle requested for a copy of the  
17 verified complaint pursuant to California Penal Code 988.

18 60. Judge Sanchez gave the non-responsive comment, "The  
19 judicial counsel form is an appropriate method to charge you  
20 with the vehicle code sections. So what plea did you want to  
21 enter?" and changed the subject by asking what plea I wanted to

1 enter. Judge Sanchez did not provide Bikle with a copy of the  
2 alleged complaint upon my request.

3 61. Bikle was exhausted and requested another week to  
4 respond.

5 62. Judge Sanchez did not dismiss the case on any of the  
6 occasions that Bikle raised oral argument regarding the points  
7 contained within Document #1001 Version 1.001.

8 63. Bikle made numerous attempts to get the case dismissed as  
9 there had clearly been no initiation of prosecution by an  
10 individual who was authorized to initiate criminal proceedings  
11 in the name of the People of the State of California.

12 64. On August 4, 2012, Document 1009v1.000, titled "A  
13 verified statement of objection to further hearings or trials  
14 before Judge Deborah L. Sanchez", was filed via USPS with the

15 Clerk in department 006 (Certified Mail

16 #70101870000123965150).

17 66. On August 6, 2012, Bikle had JPL Process Service, serve  
18 copies of Document #1009 Version 1.000, titled "Verified  
19 Statement of objection to further hearings or trials before Judge  
20 Deborah L. Sanchez (CCP 170.3(c)(1))", upon Judge Sanchez,  
21 in response to Judge Sanchez's refusal to recuse herself and her

1 passing upon her own disqualification or upon the sufficiency in  
2 law, fact, or otherwise, of the statement of disqualification  
3 filed by Plaintiff.

4 67. 10 days after the filing of Document #1009 Version 1.000,  
5 Judge Sanchez failed to file a consent or answer. Doe9, the  
6 clerk with whom a copy was filed, by USPS, failed to notify the  
7 presiding judge or person authorized to appoint a replacement  
8 of the recusal as provided in subdivision (a) of California Code  
9 of Civil Procedure 170.3.

10 69. On August 8, 2012, Judge Sanchez attempted to get Bikle to  
11 be a witness against himself.

12 71. On August 14th, 2012 Bikle told Judge Sanchez that he had  
13 correspondences with Deputy District Attorney Mario Trujillo  
14 that stated there had been no initiation of prosecution. Judge

15 Sanchez indicated that the correspondences were not in the  
16 court records for her to review; however, the court records at no  
17 point included a complaint filed by an individual authorized to  
18 initiate criminal proceedings in the name of the  
19 People of the State of California. This should have been more  
20 than enough evidence to have dismissed the case on the first  
21 appearance, as these procedural deficits where clearly laid forth  
in Document #1001 Version 1.001 titled, "Motion to dismiss on

1 the grounds that the Peace Officer and Clerk of Court are  
2 practicing law without a license", which was filed nearly 3  
3 months before Bikle's initial arraignment. On August 21, 2012  
4 Bikle filed Document #1013 Version 1.000, which reiterated the  
5 issue of the failure to initiate prosecution, amongst other  
6 pertinent failures in following the California Codes. The case  
7 was finally dismissed, but none of the proposed orders which  
8 Bikle had included with Document #1001 Version 1.001 and  
9 Document #1013 Version 1.000 were used. Both of  
10 which indicated that the prosecuting attorney had not initiated  
11 prosecution.

12 72. Judge Sanchez knew that there was no Prosecutor handling  
13 the case and said so on August 14, 2012. The case was not  
14 dismissed at that moment, as it should have been.

15 73. On August 14, 2012, Judge Sanchez attempted to get Bikle  
16 to be a witness against himself again.

17 74. On August 14, 2012 Bikle requested again for copy of the  
18 verified complaint pursuant to Penal Code 988. He still was not  
19 given a copy by the court. Bikle was never given a copy of the  
20 verified complaint, at arraignment, by the court.

21 75. A carbon copy of a notice to appear is not an exact duplicate  
of an alleged complaint filed with the court because as Judge

1 Sanchez indicated, "They usually record those on the back of  
2 the citation.", in reference to additional allegations by a peace  
3 officer.

4 76. On August 21, 2012 Judge Sanchez dismissed the last of the  
5 alleged charges in the alleged complaint.

6 77. At no point in time did the record contain evidence of a final  
7 agency determination in regards to the contested issue of the  
8 right to travel and property use rather than the alleged operation  
9 of a motor vehicle.

10 78. The jurisdiction of the court was not invoked, at any time,  
11 by an individual authorized to initiate criminal proceedings in  
12 the name of the People of the State of California.

13 80. On October 2, 2012 a distinctly different Document #2010  
14 was sent to Sheriff Leroy Baca to clarify the LASD policies  
15 with processing traffic citations.

16 81. On October 23, 2012, as I was en route to hand deliver my  
17 claim with the appropriate government office, Sergeant Suarez  
18 from Lakewood Station contacted about my inquiry regarding  
19 policies for the handling of Notices to Appear. He said the  
20 District Attorney is not involved at all in traffic matters. He said  
21 the arresting officer sends the Notice To Appear (NTA) to traffic

1           investigators. The traffic investigators make a copy of the NTA  
2           and send the copy to the court.

3           82. In October 2012 Document #2011 was mailed to the court  
4           reporter for Department 006.

5

## 6           **ASSIGNMENT OF ERROR**

7           1. **The District Court incorrectly decided the facts.**

8

9           (A) The correct facts are stated in the original complaint, as allegations  
10          15-86. Before the facts can be examined, they must first be interpreted correctly.

11          See Dismissal Order at 10-12.

12          With regards to testing if absolute immunity applied to the defendants, the District  
13          Court erred in it's interpretation of the facts that subject-matter jurisdiction had  
14          been conferred upon the Superior Court and that all of the defendants were thus  
15          covered by immunity.

16          2. **The District Court misinterpreted the law.**

17          This error included relying upon People v. Carlucci, 23 Cal. 3d 249, 590  
18          P.2d 15 (1979) as a justification for the court personnel actions without a  
19          prosecutor, which does not address the fact that a prosecutor **must first** invoke the  
20          jurisdiction of the court before the court can hold proceedings, either in the  
21

1 prosecutor's presence or absence. See Dismissal Order at 10. In it's erroneous  
2 application of People v. Carlucci, the District Court put the wagon before the horse.

3 **The District Court applied the wrong law.**

4 The District Court applied the wrong law in assessing whether due process  
5 was given to Bikle by the Superior Court of California at Bellflower, whether a  
6 separation of powers violation had occurred, and whether the defendants were to  
7 be afforded absolute immunity.

8 (A) The District Court cited People v. Stapf in response to Bikle's claim  
9 that the court clerk had initiated criminal prosecution by using a notice to appear,  
10 which was not signed by a prosecuting authority to indicate prosecutorial intent, to  
11 create a case for criminal proceedings. See Dismissal Order at 10. This case is not  
12 controlling for a number of reasons.

13

14 (B) The District Court erred by not adhering to the standard set forth in  
15 Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 352 (1872), 20 L.Ed. 646 for  
16 determining if absolute immunity could be granted to the defendants. The District  
17 Court cited Ashelman v. Pope, 793 F.2d 1072, 1075 (9th Cir. 1986), Mullis, 828  
18 F.2d at 1389 (1987), in addition to Stump v. Sparkman, 435 U.S. 349, 356, 357  
19 (1978) as indicating that, "...judicial immunity was only unavailable "when a judge  
20 acts in clear absence of all jurisdiction" or performs an act that is not judicial in  
21 nature". See Dismissal Order at 11. However, this is only a subset of the potential  
scenarios where judicial immunity shall not be granted.

1       The District Court erred by asserting absolute quasi-judicial immunity for  
2 the court clerks. In re Castillo, 297 F.3d 940, 952 (9th Cir. 2002) and Mullis v. U.S.  
3 Bankr. Ct., 828 F.2d 1385, 1390 (9th Cir. 1987) were cited in support of this  
4 contention; however, neither is controlling when considering the facts alleged,  
5 which include initiating criminal proceedings without the clear intention of a  
6 prosecuting authority to initiate prosecution of a criminal cause of action. See  
7 Dismissal Order at 11.

8       **4. There are other reasons why the District Court's judgement was wrong.**

9           The court came to the wrong conclusion based on misinterpretation of  
10 the underlying facts and law.

11          The District Court failed to observe the fact that Doe1 filed a notice to  
12 appear as a criminal complaint. See Complaint at para. 15.

13       **5. Other specific issues on appeal.**

14          The District Court erred by not holding an evidence hearing to aid in  
15 discerning the details of the case presented by Bikle. Bikle was not given an  
16 opportunity to be heard with regards to the plentiful evidence supporting his  
17 contentions that the District Attorney never initiated prosecution against him,  
18 which includes nothing less than such an admission by a Deputy District Attorney  
19 who works at Bellflower Courthouse. Bikle was not given an opportunity to  
20 subpoena the Superior Court of California at Bellflower for the alleged original  
21 complaint which the employees at the court used to create a criminal proceeding. If

1 Bikle has never been given a chance to see the true copy of the alleged complaint,  
2 in addition to obtaining a true copy thereof, then how could the District Court  
3 possibly know if prosecution was properly initiated let alone that the doctrine of  
4 absolute immunity could apply to all of the court employees named as defendants?

5 Bikle was facing up to 6 months in prison and a \$1000 fine as a result of the  
6 unlawfully commenced proceedings. Bikle has a right to be heard and present  
7 evidence supporting his contention of court employee liability as a result of acting  
8 clearly absent all jurisdiction.

9 In addition, Bikle intended to include charges for violating the 6th  
10 amendment and the 6th amendment via the 14th, as can be seen in the opening of  
11 the complaint and the claim of jurisdiction; however, due to the complexity of the  
12 case these sections for the causes of actions were accidentally omitted. See  
13 Complaint at 3, para. 6. These causes of action were to include the right to a  
14 speedy and public trial, to be confronted with the witnesses against Bikle, and to  
15 have the assistance of counsel. The alleged "case" was "arraigned" almost 10  
16 months after the date in which Bikle was held to account by a peace officer. The  
17 peace officer was not present when the alleged violations were alleged to have  
18 occurred. And finally, Commissioner Pearce and Judge Sanchez both attempted to  
19 elicit pleas from Bikle without informing him of his right to counsel.

20 Furthermore, Bikle accidentally omitted the invocation of jurisdiction under  
21 the Fifth Amendment in the "Jurisdiction & Venue" section, as it was also clearly  
intended, being the first of several due process counts against defendants. See  
25

1 Complaint at 3, para. 6. Bikle did not intend to invoke jurisdiction under the Fourth  
2 Amendment, but rather the Fifth Amendments of the United States Constitution.

3 Bikle should be allowed to amend his request for an injunction to clarify  
4 what is being alleged and requested, to wit:

5 "WHEREFORE, Bikle demands a permanent injunction against the  
6 Defendants to halt all systemic actions of denial of due process and the systematic  
7 and fraudulent violations of the separation of powers when dealing with Bikle on  
8 any and all alleged criminal violations. The Defendants have refused to  
9 acknowledge the unique role of the prosecuting attorney in exercising sole  
10 discretion as to the initiation of criminal prosecution. It is well settled law that the  
11 prosecuting attorney, of the executive branch, is the authority invested with the  
12 authority to initiate criminal prosecution. Bikle will suffer irreparable harm by  
13 denial of this injunction. He will suffer insult, degradation, and deprivation of  
14 personhood by denial of this injunction. Bikle is likely to prevail in the causes of  
15 action laid forth against the Defendants. The facts in this complaint make Bikle's

16 claims undeniable. Bikle has no other remedy at law to protect himself from parties  
17 who it has been shown have conspired to deprive him of his fundamental rights.

18 Denial of Bikle's request for injunction will cause Bikle to bear a greatly  
19 imbalanced harm. Bikle's harm will be loss of the right to due process, right to be  
20 free from tortious conduct (fraud), damage to reputation, and assault upon  
21 personhood. Denial of Bikle's injunction goes beyond economic injury. The costs

to the court on error later corrected to the favor of Defendants is not as great as the

1 costs to the court for error later corrected in Bikle's favor. Granting Bikle's request  
2 for injunction conserves the fundamental rights established in the United States  
3 Constitution no matter who prevails."

4 Bikle should be allowed to amend his complaint with regards to the 42 USC  
5 1985(3) charges. Apparently, it was unclear to the District Court the way it was  
6 presented. The class of persons being deprived of their rights include those  
7 individuals who are cited by peace officers for allegedly violating vehicle code.  
8 Bikle is a member of this class. See Complaint at paragraphs 16-18, 185. The right  
9 that is being deprived from this class is the right to due process. See Complaint at  
10 para. 15, 185. The individuals involved in depriving this class of persons of such a  
11 right include the defendants. The defendants concerted actions of initiating  
12 criminal prosecution and then holding criminal proceedings without jurisdiction,  
13 while ignoring Bikle's vigorous and time-consuming efforts to terminate the  
14 unlawful proceedings, violated Bikle's due process rights. See Complaint at  
15 paragraphs 15, 16, 17, 21, 23, 24, 25, 27, 28, 32, 33, 36, 37, 38, 39, 41, 42, 48, 49,  
16 53, 54, 55, 57, 58, 59, 60, 62, 63, 64, 66, 67, 69, 71, 72, 73, 74, 75, 77, 78.  
17 Additional supporting facts are expected to be found in the process of discovery  
18 which may include emails and written correspondences.

19 Bikle should be allowed to amend his complaint, to clarify or add elements,  
20 as permitted by law.

## Argument

1           **I. Statutory and State Constitutional Analysis**

3       **1. The District Court incorrectly decided the facts.**

4           (A) The correct facts are that an individual authorized to initiate  
5 prosecution in a criminal action had not charged Bikle with any violations of the  
6 law. See Complaint at 15-18, 59, 60, 63, 71, 72, 74, 75, 78. Furthermore, Bikle's  
7 complaint did not indicate what alleged violations the peace officer wrote on the  
8 traffic citation. Traffic citations can be issued for alleged misdemeanors and/or  
9 infractions. The District Court erred in presuming that Bikle was lawfully charged  
10 with an infraction. The District Court committed a fundamental error by incorrectly  
11 deciding that prosecution had been lawfully initiated against Bikle, by treating the  
12 traffic citation issued by a peace officer as a verified complaint and summons  
13 issued by an individual who is authorized to initiate prosecution in a criminal  
14 action in the name of the People of the State of California. The District Court built  
15 upon this error by determining that the conditions were met for granting the  
16 absolute immunity of all of the court personnel involved.

17       **2. On the District Court's misinterpretation of the law**

18           People v. Carlucci, 23 Cal. 3d 249, 590 P.2d 15 (1979) was misinterpreted  
19 by the District Court with the issue at hand. Before a trial court can hold criminal  
20 proceedings without a prosecuting attorney present, that prosecuting attorney must  
21 decide to initiate criminal prosecution. See California Constitution, article V,

1 section 13. The following is an excerpt from that case regarding this scenario with  
2 a warning:

3 "In the absence of a prosecuting attorney the citing officer  
4 routinely takes the stand and gives a narrative description of the  
5 events leading to the issuance of the citation. The defendant  
6 will then have full opportunity to cross-examine the officer and  
7 then may himself testify, and present such other evidence as  
8 may be probative and relevant. Under these circumstances we  
9 are satisfied that a trial judge should, within proper limits, be  
10 permitted to ask questions for the purpose of clarifying  
11 ambiguities and to insure that justice is done both to the  
12 accused and to the People, all this without jeopardizing the  
13 court's ability to act in a judicious, independent, detached, and  
14 neutral manner.

15 **In approving this practice, however, we caution that the**  
16 **trial court must not undertake the role of either prosecutor**  
17 **or defense counsel."**

18 This final warning was not heeded by the employees of the Superior Court at  
19 Bellflower. A prosecutor did not initiate prosecution and the trial court created a  
20 criminal proceeding without jurisdiction, which is reflected in the trial court  
21 record. Before the trial court can commence criminal proceedings, jurisdiction

1 must be conferred upon the court via a valid verified complaint and the filing of  
2 proof of service of summons by the prosecuting attorney. In the case of Ralph v.  
3 Police Court, 84 Cal. App. 2d 257 (1948) the court provided as follows:

4 “Penal code section 1426 [which codified the 5<sup>th</sup> amendment of  
5 the constitution, and has been partially re-codified in Penal  
6 Code Sections 740, 950, 952 and 959], provides as follows: **All**  
7 **proceedings** and actions before a magistrate or police court or  
8 municipal court, for a public offense of which such courts have  
9 jurisdiction, **must be commenced by complaint under oath**,  
10 setting forth the offense charged, with such particulars of **time**,  
11 **place, person and property** as to enable the defendant to  
12 understand distinctly the character of the offense complained of,  
13 and to answer the complaint...”

14 “Unless waived, as provided by statute, the **filing of such**  
15 **complaint is essential to the jurisdiction of the police court**.

16 That has been the law of this state for many years. It was stated  
17 as follows in the case of In re Williams, 183 Cal. 11, 12 [190 P.  
18 163]: “It goes without saying that **it is essential to the**  
19 **jurisdiction of a police court** to put a person upon trial for a  
20 public offense that charging such person with the commission  
21 of such offense.” (See also, People v Brussel, 122 Cal. App.  
Supp. 785 [7 p. 2d 403].) It is also the law in other jurisdictions.

1           **The rule, supported by many authorities**, is stated as follows  
2           in 22 *Corpus Juris Secundum*, pages 456, 457 section 303: The  
3           term “complaint” is a technical one descriptive of proceedings  
4           before magistrates. It is and has been defined to be the  
5           preliminary charge or accusation against an offender, made by a  
6           private person or an informer to a justice of peace or other  
7           proper officer, charging that the accused has violated the law. It  
8           has also been defined as a preliminary charge before a  
9           committing magistrate;...**The complaint is the foundation of**  
10           **the jurisdiction of magistrate**, and it performs the same office  
11           that an indictment or information does in superior courts.”

12           3. **The District Court applied the wrong law.**

13           (A)(1)The statute in the California Penal Code (Cal. Pen. Code) 959.1(c)  
14           (1),which was at the heart of People v. Stapf, provides as follows:

15           "(c) A magistrate or court is authorized to receive and file an  
16           accusatory pleading **in electronic form** if all of the following  
17           conditions are met:

18           (1) The accusatory pleading is issued in the name of, and  
19           transmitted by, a public prosecutor or law enforcement agency  
20           filing pursuant to Chapter 5c (commencing with Section 853.5)  
21           or Chapter 5d (commencing with Section 853.9), or by a clerk  
            of the court with respect to complaints issued for the offenses of

1 failure to appear, pay a fine, or comply with an order of the  
2 court."

3 No accusatory pleading in **electronic form** was ever filed against Bikle. See  
4 Complaint at 10, para. 81. An altered copy of the notice to appear, which was  
5 different than the one issued to Bikle, was in the case file. Furthermore, Bikle  
6 appeared for all scheduled appearances and none of the alleged charges issued by  
7 the defendant clerk involved either failures to appear, pay a fine, or comply with an  
8 order of the court. People v. Stapf clearly does not apply to the immediate  
9 circumstances.

10 Even if the notice to appear had been transmitted in electronic form to the  
11 magistrate or court it failed to meet the following portions of the Cal. Pen. Code  
12 959.1(c) :

13 "When transmitted in electronic form, the accusatory pleading  
14 shall be exempt from any requirement that it be subscribed by a  
15 natural person. **It is sufficient to satisfy any requirement that**  
16 **an accusatory pleading, or any part of it, be sworn to before**  
17 **an officer entitled to administer oaths, if the pleading, or**  
18 **any part of it, was in fact sworn to and the electronic form**  
19 **indicates which parts of the pleading were sworn to and the**  
20  
21

1                   **name of the officer who administered the oath." [emphasis  
2                   added]**

3                  There is absolutely no evidence in the trial court record that the notice to  
4 appear, in its entirety or any part of it, was sworn to under oath administered  
5 by an officer who is authorized to administer such an oath.

6  
7                  (A)(2)The Executive power of initiating prosecution is a part of the public  
8 prosecutor's authority. The district attorney, a member of the executive branch of  
9 government, can and should exercise discretion to decide which case to prosecute.

10                 See Esteybar v. Municipal Court, 5 Cal.3d 119 at 127, 95 Cal. Rptr. 524, 485 P.2d  
11 1140 (1971). The prosecution of criminal offenses on behalf of the people is the  
12 sole responsibility of the public prosecutor. See Dix v. Superior Court, 53 Cal.3d  
13 442 at 451, 279 Cal. Rptr. 834, 807 P.2d 1063 (1991). Prosecutorial discretion,  
14 though recognized by statute in California, is found upon constitutional principles  
15 of separation of powers and due process of law. The district attorneys unlimited

16                 discretion in the crime-charging function has been uniformly recognized. See  
17 People v. Wallace, 169 Cal. App.3d at 406, 215 Cal. Rptr. 203 (1985). The  
18 prosecutor has discretion to decline to prosecute even where there is probable  
19 cause to believe an individual has committed a crime. See Davis v. Municipal  
20 Court, 46 Cal.3d 64 at 77, 249 Cal. Rptr. 300, 757, P.2d 11 (1988). That discretion  
21 would be eliminated if the court, not the prosecutor, were allowed to commence the  
prosecution since, once commenced, only the court has the authority to dismiss it.

1 See People v. Municipal Court, (Pellegrino) 27 Cal. App.3d 193 at 200, 103 Cal.  
2 Rptr. 645 (1972). Just as the executive may not exercise judicial power, so the  
3 judicial is prohibited from entering upon executive functions. See People v. Smith,  
4 53 Cal. App.3d 655, at 659-660, 126 Cal. Rptr. 195 (1975).

5 A court clerk is a member of the Judicial branch. See Constitution of  
6 California, article 6, section 4. A court clerk has no authority to initiate prosecution  
7 of crimes, or public offenses, on the part of the People of the State of California.  
8 The restriction of powers is plainly written in the California Constitution, article  
9 III, section 3. There are no exemptions in the California Constitution stating that a  
10 clerk of court shall, or may, initiate prosecution on behalf of the public for crimes  
11 or offenses. Any such exemptions must be added to the California Constitution via  
12 the methods that it provides. See Constitution of California, article 18, sections 1,  
13 et seq. Decisions made by the Judicial branch do not create any such exemptions,  
14 as there is no provision for such methods of creating exemptions in the  
15 Constitution of California.

16  
17 (A)(3)Finally, it is a violation of the separation of powers for the legislature  
18 to enact such a statute, as it interferes with the powers of the executive branch to  
19 determine who, within its authority, shall be delegated the responsibility of  
20 discretion in the initiation of criminal prosecution. See California Constitution,  
21 article III, section 3.

(A)(4)An accusatory pleading is a necessary prerequisite to the court's jurisdiction. See Serna v. Superior Court, 40 Cal.3d 239, 254, 219 Cal. Rptr. 420, 707 P.2d 793 (1985); see also City of San Diego v. Municipal Court, 102 Cal. App.3d 775, at 778, 162 Cal. Rptr. 420 (1980). Only the people may file an accusatory pleading. See Hicks v. Board of Supervisors, 53 Cal. App.3d 228, at 240-241, 138 Cal. Rptr. 101 (1977); see also People v. Smith, 53 Cal. App.3d 655, at 659-660, 126 Cal. Rptr. 195 (1975); see also People v. Municipal Court, (Pellegrino) 27 Cal. App.3d 193 at 200, 103 Cal. Rptr. 645 (1972). Therefore, the State, in order to have lawfully proceeded with the alleged action, must do so by verified formal complaint which has been filed and properly served by the District Attorney pursuant to Penal Code Sections 17(d)(1), 740 , and 853.9, as held in Heldt v. Municipal Court, 163 Cal. App.3d 532 (1985) and numerous other cases. In our common law judicial system, we rely upon a separation of roles to bring about proper results. The courts role is to decide cases; the parties role is to bring cases before the courts. See Municipal Court v. Superior Court, (Gonzalez) 5 Cal. 4th 1126 at 1131, 22 Cal. Rptr. 2d 504, 857 P.2d 325 (1993). A court has no jurisdiction to proceed with the trial of an offense without a valid indictment or information. See Jones v. Superior Court, 96 Cal. App.3d 390, 157 Cal. Rptr. 809 (1979).

1           (B) The discretion to initiate prosecution is not a ministerial action.

2           "A ministerial act is an act that a public officer is required to  
3           perform in a prescribed manner in obedience to the mandate of  
4           legal authority and without regard to his own judgment or  
5           opinion concerning such act's propriety or impropriety, when a  
6           given state of facts exists. Discretion, on the other hand, is the  
7           power conferred on public functionaries to act officially  
8           according to the dictates of their own judgment. [Citation.]"

9           (Rodriquez v. Solis, 1 Cal. App.4th 495, 501-502.,(1991))

10  
11           Judicial absolute immunity can not be granted to a court clerk for  
12 performing an exclusively executive branch function, which is obviously outside  
13 of the scope of clerk employment. When a duty is purely ministerial in character,  
14 not only is the public officer without power to exercise any discretion in  
15 determining whether or not to perform the duty, but exercise of the duty may be

16 compelled by mandamus. (Id., at p. 501; see also State of California v. Superior  
17 Court, 12 Cal.3d 237, 247. (1974)) If the filing of a criminal charge is an action  
18 within the "ministerial" duties of a court clerk then it is that a clerk not only may,  
19 but must file such charges in every case, without the exercise of any discretion  
20 whether to file such charges. If the clerk fails to file such charges, he may be  
21 forced to do so by a writ of mandate.

1       The settled law concerning the necessary discretion involved in the  
2 prosecution of criminal cases shows that a statute does not and could not place a  
3 ministerial duty upon a court clerk to file criminal charges.

4       It is, rather, patently obvious that the question of whether a criminal charge  
5 shall be filed remains a matter of discretion, as it always has been, and must be as a  
6 matter of due process as discussed above. For example, shall a criminal charge be  
7 filed if a defendant fails to appear on the date specified on a ticket, but appears one  
8 day later? Shall a criminal charge be filed if the failure to appear is upon a matter  
9 merely requiring repair of equipment? Shall a criminal charge be filed when a  
10 defendant has appeared in court, but is late with the payment of a fine? Shall an  
11 accused felon's failure to appear be charged as a misdemeanor or a felony (see Cal.  
12 Pen. Code § 1320(b))? Obviously, discretion will be exercised in all of these  
13 situations, and more.

14       Indeed, the entire history of the prosecutorial function in Anglo-American  
15 jurisprudence is that the decision whether or not to commence a criminal action is  
16 one involving the exercise of discretion. (See Dix v. Superior Court, 53 Cal.3d 442,  
17 451-452.) Even when an offense has undoubtedly been committed, the prosecutor  
18 retains the discretion not to file charges. Thus, the prosecutorial function is exactly  
19 the opposite of a ministerial duty:

20            "The public prosecutor has no enforceable 'duty' to conduct  
21 criminal proceedings in a particular fashion. On the contrary,

1           his obligation is to exercise exclusive professional discretion  
2           over the prosecutorial function." (Id., 53 Cal.3d at p. 453.)

3           The question then becomes whose discretion is being exercised? It would  
4           take the most narrow of blinders to come to the conclusion that a court clerk can or  
5           will make such decisions independent from the court and judges by whom the clerk  
6           is employed. It is, rather, obvious that when such discretion is exercised, it is  
7           exercised in the manner directed by the judiciary. Even if some court clerk  
8           somewhere was initiating criminal charges without the authorization of his  
9           employer, it still remains the fact that the clerk is subject to the control of the  
10          judiciary, who may intervene in that process at any time.

11          It is thus certain that the filing of criminal charges is not a "ministerial  
12          action," but is an exercise of discretion. When such charges are filed by a court  
13          clerk, it is an exercise of discretion by the judiciary, a function reserved to the  
14          executive. The Court of Appeal in People v. Staph, opines that it is permissible for  
15          the judiciary to exercise functions within the exclusive purview of the executive,  
16          because the separation-of-powers doctrine is not applied "in a rigid manner," citing  
17          Davis v. Municipal Court (1988) 46 Cal.3d 64, 76. (Slip opn., pp. 6-7.) However,  
18          the Court of Appeal has plainly misunderstood both the doctrine and Davis.

19          What the California Supreme Court held in Davis was not that one branch of  
20          government could exercise functions reserved to another, but that some functions  
21          might be characterized as properly exercised by more than one branch. The Davis  
case involved legislation giving the District Attorney the power to approve of local  
38

1 diversion programs (not involving the question of who should be referred to an  
2 approved program). This court held that while approval of such programs could be  
3 a legislative function, "The exercise of such quasi-legislative authority, even when  
4 the policy decision that is made by the executive or judicial official is one that  
5 could have been made by the Legislature, has never been thought to violate the  
6 separation-of-powers doctrine." (Id., 46 Cal.3d at p. 76.) The court concluded that  
7 "... the Legislature simply recognized that pretrial diversion is closely and  
8 intimately related to the district attorney's traditional executive authority over the  
9 prosecutorial process, and determined, as a matter of policy, not to permit local  
10 diversion programs to be implemented over the district attorney's objection." (Id.,  
11 at p. 77.)

12 The matter at issue herein is quite different from that presented in Davis. The  
13 initiation of criminal proceedings is not a function which may be exercised by the  
14 judiciary or the Legislature in any case. It has, rather, been established law for  
15 decades that the initiation of criminal proceedings is a function exclusively within  
16 the control of the executive.

17  
18 Finally, if the Court of Appeal, in People v. Staph, were correct that court  
19 clerks are not acting as members of the judicial branch when initiating criminal  
20 prosecutions, then it would have to be concluded that a clerk would be acting as a  
21 private citizen when filing charges. However, private citizens have no more  
authority to institute criminal proceedings than do judges. This rule was confirmed

1 by the California Supreme Court in its most recent discussion of this issue in Dix v.  
 2 Superior Court, supra, 53 Cal. 3d 442. In that case, it was claimed that the victim  
 3 of a criminal offense had standing to compel a court to sentence a defendant to  
 4 prison. The court disagreed, stating that "The prosecution of criminal offenses on  
 5 behalf of the People is the sole responsibility of the public prosecutor." (Id., at p.  
 6 451, emphasis added.) The court went on to state that:

7       "The prosecutor ordinarily has sole discretion to determine  
 8 whom to charge, what charges to file and pursue, and what  
 9 punishment to seek. [Citations.] No private citizen, however  
 10 personally aggrieved, may institute criminal proceedings  
 11 independently [citations], and the prosecutor's own discretion is  
 12 not subject to judicial control at the behest of persons other than  
 13 the accused. [Citations.] An individual exercise of prosecutorial  
 14 discretion is presumed to be ' "legitimately founded on the  
 15 complex considerations necessary for the effective and efficient  
 16 administration of law enforcement ...." ' [Citations.]" (Id., 53  
 17 Cal.3d at p. 451, emphasis added.)

18       This court also stated in Dix that to allow a private citizen to intervene in  
 19 sentencing matters, "would undermine the People's status as exclusive party  
 20 plaintiff in criminal actions, interfere with the prosecutor's broad discretion in  
 21 criminal matters, and disrupt the orderly administration of justice." (Id., 53 Cal.3d  
 at p. 454, emphasis added.)

1       There is absolutely no authority in support of the proposition that a function  
 2 exclusively within the control of one branch of government may, nevertheless, be  
 3 exercised by another branch, or by private citizens. One could not say, for  
 4 example, that it would be proper for the judiciary or private citizens to enact  
 5 legislation, so long as the legislation involved only minor matters. Thus, the  
 6 initiation of criminal proceedings is not a function, such as that addressed in Davis,  
 7 which might properly be exercised by any other branch of government. As stated  
 8 in Dix, initiating criminal proceedings is a matter within the sole and exclusive  
 9 control of the executive, to the exclusion of any other branch of government and of  
 10 private citizens. When criminal proceedings are initiated by, or at the direction of,  
 11 the judiciary, the separation-of-powers doctrine is violated. When criminal  
 12 proceedings are initiated by private citizens, our entire constitutional scheme is  
 13 violated. The Court of Appeal's contrary ruling, in People v. Staph, is simply  
 14 wrong, and must be abrogated.

15     **4. There are other reasons why the District Court's judgement was wrong.**

16       A criminal complaint has specific properties, most of which were not  
 17 fulfilled by the notice to appear. Concerns about the "alleged" criminal complaint  
 18 were explicitly mentioned in Bikle's complaint and the motions filed in the  
 19 Superior Court of California at Bellflower. See Complaint at para. 15, 16, 17, 18,  
 20 21, 25, 30, 34, 59, 60, 63, 71, 74, and 75.

21       A complaint is a form of an accusatory pleading. See Cal. Pen. Code §  
 691(c). Except as otherwise provided by law, all misdemeanors and infractions

1 must be prosecuted by written complaint under oath subscribed by the  
2 complainant. See Cal. Pen. Code § 740. There was no evidence that a complaint  
3 had been filed which had been subscribed by a prosecuting attorney who was under  
4 oath.

5 Whenever the written notice to appear has been prepared on a form  
6 approved by the Judicial Council, an exact and legible duplicate copy of the notice  
7 when filed with the magistrate shall constitute a complaint to which the defendant  
8 may enter a plea and, if the notice to appear is verified, upon which a warrant may  
9 be issued. See Cal. Pen. Code § 853.9(b); see also Cal. Veh. Code § 40513(b). Any  
10 random individual cannot simply prepare a notice to appear on such a form to  
11 initiate prosecution of criminal charges. This statute must be read in light of who  
12 has been charged with the discretion to initiate prosecution, which is the  
13 prosecuting attorney. See California Government Code § 26500; see also Cal. Gov.  
14 Code § 26502. The words "prosecuting attorney" include any attorney, whether  
15 designated as district attorney, city attorney, city prosecutor, prosecuting attorney,  
16 or by any other title, having by law the right or duty to prosecute, on behalf of the  
17 people, any charge of a public offense. See Cal. Pen. Code §691(d) The written  
18 notice to appear was prepared, by a peace officer, on a form approved by the  
19 Judicial Council. See Complaint at para. 16-18. There are no exemptions allowing  
20 a peace officer to complete such a form, which is used in lieu of a verified  
21 complaint, to initiate prosecution. Even if the legislature included an express  
exemption for a peace officer to utilize such a process it would be a violation of the

1 separation of powers, as the legislature would then be deciding who may exercise  
2 the executive branch discretionary function of initiating prosecution. The notice to  
3 appear was not verified.

4 The first pleading on the part of the people in a misdemeanor or infraction  
5 case is the complaint except as otherwise provided by law. See Cal. Pen. Code §  
6 949. The accusatory pleading must contain: The Title of the action, specifying the  
7 name of the court to which the same is presented, and the names of the parties; A  
8 statement of the public offense or offenses charged therein. See Cal. Pen. Code §  
9 950. In this instance, the accusatory pleading did not contain the title of the action,  
10 the names of the parties, and a statement of the public offense or offenses charged  
11 therein. See Cal. Pen. Code § 952. The accusatory pleading did not contain any  
12 counts or statements that the accused had committed some sort of public offense.

13 The accusatory pleading is sufficient if it can be understood therefrom: If a  
14 complaint, that it is made and subscribed by some natural person and sworn to  
15 before some officer entitled to administer oaths. See Cal. Pen. Code § 959. The  
16 accusatory pleading was subscribed by a natural person; however, there is no  
17 evidence that it was sworn to before some officer entitled to administer oaths. The  
18 accusatory pleading was insufficient.

19 The District Court failed to hold any evidentiary hearings to determine if the  
20 notice to appear met the aforementioned properties required of a valid criminal  
21 complaint, which would confer jurisdiction over the case to the Superior Court.

Absent a valid complaint, there is no controversy, or potential case, presented to

1 confer subject-matter jurisdiction upon the Superior Court. Nor did the District  
2 Court make a determination as to whether it, if it was even a valid complaint, had  
3 been properly served with a summons upon Bikle. See Cal. Gov. Code § 22. These  
4 determinations are required before absolute immunity can be granted.

5

## 6 **Federal Law Analysis**

### 7 **The District Court applied the wrong law.**

8

9 (B) "When the Supreme Court first formulated the "clear absence"  
10 standard, however, it stated that the principle of immunity applied when there was  
11 "jurisdiction of both subject and person." "Bradley v. Fisher, 80 U.S. (13 Wall.)  
12 335, 352 (1872), 20 L.Ed. 646. Said case further provided:

13

14 "Admit that the court may proceed summarily, still summary  
15 jurisdiction is not arbitrary power; and a summons and  
opportunity of being heard is a fundamental principle of all

16

justice. The principle has been declared by this court in *Ex parte*  
17 *Garland*, to be specifically applicable to the case of disbarring  
18 an attorney; and so declared for obvious reasons. **Without then**

19

**having summoned Mr. Bradley, and having given to him an  
opportunity to be heard, the court had no jurisdiction of  
Mr. Bradley's person or of any case relating to him.** It is not

20

21

1 enough that it have jurisdiction over the subject-matter of the  
2 complainant generally; it must have jurisdiction over the  
3 particular case, and if it have not, the judgment is void ab initio.  
4 The whole subject is set forth in Smith's Leading Cases, where  
5 the authorities are collected and the principle deduced, that  
6 when the record shows that the court has proceeded without  
7 notice to the party condemned, the judgment will be void, and  
8 may be disregarded in any collateral proceeding."

9 **Bikle was never issued a valid summons**, requested for and signed by the  
10 prosecuting attorney, and signed by a judge or clerk at the Superior Court of  
11 California at Bellflower. The court failed to obtain in personam jurisdiction over  
12 Bikle. Bradley v. Fisher goes on to state:

13 "In the present case we have looked into the authorities and are  
14 clear, from them, as well as from the principle on which any  
15 exemption is maintained, that the qualifying words used were  
16 not necessary to a correct statement of the law, and that judges  
17 of courts of superior or general jurisdiction are not liable to civil  
18 actions for their judicial acts, even when such acts are in excess  
19 of their jurisdiction, and are alleged to have been done  
20 maliciously or corruptly. **A distinction must be here observed**  
21 **between excess of jurisdiction and the clear absence of all**

1 jurisdiction over the subject-matter. Where there is clearly  
2 no jurisdiction over the subject-matter any authority  
3 exercised is a usurped authority, and for the exercise of such  
4 authority, when the want of jurisdiction is known to the  
5 judge, no excuse is permissible. But where jurisdiction over  
6 the subject-matter is invested by law in the judge, or in the court  
7 which he holds, the manner and extent in which the jurisdiction  
8 shall be exercised are generally as much questions for his  
9 determination as any other questions involved in the case,  
10 although upon the correctness of his determination in these  
11 particulars the validity of his judgments may depend. Thus, if a  
12 probate court, invested only with authority over wills and the  
13 settlement of estates of deceased persons, should proceed to try  
14 parties for public offences, jurisdiction over the subject of  
15 offences being entirely wanting in the court, and this being

16 necessarily known to its judge, his commission would afford no  
17 protection to him in the exercise of the usurped authority. But if  
18 on the other hand a judge of a criminal court, invested with  
19 general criminal jurisdiction over offences committed within a  
20 certain district, should hold a particular act to be a public  
21 offence, which is not by the law made an offence, and proceed  
to the arrest and trial of a party charged with such act, or

1 should sentence a party convicted to a greater punishment than  
2 that authorized by the law upon its proper construction, no  
3 personal liability to civil action for such acts would attach to the  
4 judge, although those acts would be in excess of his  
5 jurisdiction, or of the jurisdiction of the court held by him, for  
6 these are particulars for his judicial consideration, whenever his  
7 general jurisdiction over the subject-matter is invoked."

8 [emphasis added]

9 There was no evidence in the record of a verified complaint, filed by a prosecuting  
10 attorney, charging Bikle with any criminal or public offense violations or proofs of  
11 service for any such complaint and a summons. Commissioner Pearce and Judge  
12 Sanchez were both aware, based on the record, that they did not have jurisdiction.  
13 The District Court erred by not applying the standard set forth in Bradley v. Fisher.  
14 Application of said standard to the facts asserted leaves no room to conclude that  
15 absolute immunity could be granted to any of the defendants. All jurisdiction was  
16 not conferred upon the Superior Court of California at Bellflower.

17 Additional support in adhering to the standard can be found in the case of  
18 Rankin v. Howard, 633 F.2d 844 (9th Cir. 1980) where the court provided as  
19 follows:

20 "The *Stump* Court identified two specific factors to be  
21 considered in determining whether an act is "judicial": "the

1 nature of the act itself, *i. e.*, whether it is a function normally  
2 performed by a judge, and ... the expectations of the parties, *i.*  
3 *e.*, whether they dealt with the judge in his judicial capacity."

4 435 U.S. at 362, 98 S.Ct. at 1107. We also consider the  
5 underlying purpose of judicial immunity. Gregory v.  
6 Thompson, 500 F.2d 59, 63 (9th Cir.1974).

7 Although a party conniving with a judge to predetermine the  
8 outcome of a judicial proceeding may deal with him in his  
9 "judicial capacity," the other party's expectation, *i. e.*, judicial  
10 impartiality, is actively frustrated by the scheme. In any event,  
11 the agreement is not "a function normally performed by a  
12 judge." It is the antithesis of the "principled and fearless  
13 decision-making" that judicial immunity exists to protect. See  
14 Pierson v. Ray, 386 U.S. 547, 554, 87 S.Ct. 1213, 1217, 18  
15 L.Ed.2d 288 (1967); Gregory v. Thompson, 500 F.2d at 63.

16 Rankin alleged that Judge Zeller agreed in advance with the  
17 others to rule favorably on the petition. We conclude that a  
18 judge's private, prior agreement to decide in favor of one party  
19 is not a judicial act. See also Lopez v. Vanderwater, 620 F.2d  
20 1229, 1235-37 (7th Cir.1980) (judge not immune for  
21 "prosecutorial" acts prior to biased decision). If the alleged  
agreement manifests Judge Zeller's participation in a

1 conspiracy, then proof of the agreement could form the basis of  
2 liability whether or not he is immune from liability for  
3 subsequent judicial acts."

4 "Although the Supreme Court acknowledged in *Stump v.*  
5 *Sparkman* that Judge Stump may have committed "grave  
6 procedural errors," 435 U.S. at 359, 98 S.Ct. at 1106, it did not  
7 explicitly consider whether he acted in the clear absence of  
8 personal jurisdiction or whether such action would be protected  
9 by judicial immunity. The question appears to be one of first  
10 impression.

11 The district court here assumed that a court arguably having  
12 subject matter jurisdiction does not act in the "clear absence of  
13 all jurisdiction." **When the Supreme Court first formulated**  
14 **the "clear absence" standard, however, it stated that the**  
15 **principle of immunity applied when there was "jurisdiction**  
16 **of both subject and person."** Bradley v. Fisher, 80 U.S. (13  
17 Wall.) 335, 352 (1872), 20 L.Ed. 646.

18 **An absence of personal jurisdiction may be said to destroy**  
19 **"all jurisdiction" because the requirements of subject**  
20 **matter and personal jurisdiction are conjunctival. Both**

1           **must be met before a court has authority to adjudicate the**  
2           **rights of parties to a dispute.**

3           If a court lacks jurisdiction over a party, then it lacks "all  
4           jurisdiction" to adjudicate that party's rights, whether or not the  
5           subject matter is properly before it. See, e. g., Kulko v. Superior  
6           Court, 436 U.S. 84, 91, 98 S.Ct. 1690, 1696, 56 L.Ed.2d 132  
7           (1978) ("[i]t has long been the rule that a valid judgment  
8           imposing a personal obligation or duty in favor of the plaintiff  
9           may be entered only by a court having jurisdiction over the  
10          person of the defendant") (citations omitted); In re Wellman, 3  
11          Kan.App. 100, 45 P. 726, 727 (1896) (*ex parte* guardianship  
12          proceeding would be a "flagrant violation" of due process,  
13          rendering any order null and void).

14          Because the limits of personal jurisdiction constrain judicial  
15          authority, **acts taken in the absence of personal jurisdiction**

16          **do not fall within the scope of legitimate decisionmaking**  
17          **that judicial immunity is designed to protect. See Gregory v.**  
18          Thompson, 500 F.2d at 63. We conclude that a judge who acts  
19          **in the clear and complete absence of personal jurisdiction**  
20          **loses his judicial immunity.**

21          It is not sufficient that the court in fact lacked jurisdiction.  
Because jurisdictional issues are often difficult to resolve,

1       judges are entitled to decide such issues without fear of reprisal  
2       should they exceed the precise limits of their authority. Stump  
3       v. Sparkman, 435 U.S. at 356, 98 S.Ct. at 1104. Judges of courts  
4       of general jurisdiction are not liable for judicial acts merely "in  
5       excess of their jurisdiction," even when the acts "are alleged to  
6       have been done maliciously or corruptly." *Id.* (quoting Bradley  
7       v. Fisher, 80 U.S. (13 Wall.) at 347).

8       **But when a judge knows that he lacks jurisdiction, or acts in**  
9       **the face of clearly valid statutes or case law expressly**  
10      **depriving him of jurisdiction, judicial immunity is lost. See**  
11      Bradley v. Fisher, 80 U.S. (13 Wall.) at 351 ("when the want of  
12      jurisdiction is known to the judge, no excuse is permissible");  
13      Turner v. Raynes, 611 F.2d 92, 95 (5th Cir.1980) (*Stump* is  
14      consistent with the view that "a clearly inordinate exercise of  
15      unconferred jurisdiction by a judge-one so crass as to establish

16      that he embarked on it either knowingly or recklessly-subjects  
17      him to personal liability").

18      If, as alleged, Judge Zeller knew the jurisdictional allegations to  
19      be fraudulent, or if valid Kansas statutes expressly foreclosed  
20      personal jurisdiction over a proposed ward in *ex parte*  
21      proceedings for temporary guardianship, then the judge acted in  
      the clear and complete absence of personal jurisdiction. If his

1 acts were part of a conspiracy, he is properly held responsible  
2 for the consequences."

3 Footnote 10. "The Court did say that "the necessary inquiry in  
4 determining whether a defendant judge is immune from suit is  
5 whether at the time he took the challenged action he had  
6 jurisdiction over the subject matter before him." Stump v.  
7 Sparkman, 435 U.S. at 356, 98 S.Ct. at 1104. **This might imply**  
8 **that subject matter jurisdiction is sufficient to confer**  
9 **immunity, but it was said in the apparent absence of a**  
10 **specific challenge to personal jurisdiction. Further, the**  
11 **statement did not purport to exhaust the bases on which**  
12 **immunity could be overcome.** It did not, for example, mention  
13 the requirement that the "challenged action" be "judicial" in  
14 character. This requirement was discussed later in the opinion.

15 *See id.* at 360-64, 98 S.Ct. at 1106-1108. Although the language  
16 of *Stump* is broad, we cannot infer that the Court there decided  
17 an issue it did not explicitly consider. "[emphasis added]

18 It bears repeating, the District Court erred by not applying the standard set forth in  
19 the aforementioned cases. If the standard was applied, with the correctly  
20 interpreted facts, there can be no denying that the court employees cannot be  
21 granted absolute immunity and they can be held liable for damages incurred by  
Bikle.

1

2                   **CONCLUSION**

3

4                 Plaintiff requests that the order for dismissal with prejudice be vacated and  
5                 that this case be remanded to the lower court to proceed, with out granting absolute  
6                 immunity, against all defendants or, in the alternative, that the order for dismissal  
7                 with prejudice be vacated and that this case be remanded to the lower court to hold  
8                 an evidentiary hearing to determine the applicability of absolute immunity, for  
9                 each defendant, in light of the evidence that will be provided by Bikle and that  
10                 Bikle be provided with a court order demanding that the Superior Court of  
11                 California at Bellflower provide the original alleged complaint that the court clerk  
12                 used to initiate prosecution and criminal proceedings. Plaintiff also requests that  
13                 this court grant any other and further relief to which he is found to be entitled.

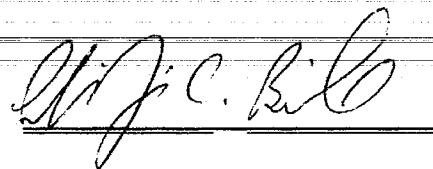
14

15

Respectfully Submitted,

16

DATED: February 27, 2014:



Philip Christian Bikle, Pro Se

17

18

19

20

21

## ADDENDUM

## CONSTITUTIONAL PROVISIONS AND STATUTES

## United States Constitution, Amendment V:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

## United States Constitution, Amendment VI:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory

1 process for obtaining witnesses in his favor, and to have the  
2 assistance of counsel for his defense."

3 United States Constitution, Amendment XIV, Section 1:

4 "All persons born or naturalized in the United States, and  
5 subject to the jurisdiction thereof, are citizens of the United  
6 States and of the state wherein they reside. No state shall make  
7 or enforce any law which shall abridge the privileges or  
8 immunities of citizens of the United States; nor shall any state  
9 deprive any person of life, liberty, or property, without due  
10 process of law; nor deny to any person within its jurisdiction  
11 the equal protection of the laws."

12 CALIFORNIA CONSTITUTIONAL PROVISIONS AND STATUTES

13 California Constitution, article III, section 3:

14 "The powers of state government are legislative, executive, and  
15 judicial. Persons charged with the exercise of one power may  
16 not exercise either of the others except as permitted by this  
17 constitution."

18 California Constitution, article V, section 13:

19 "Subject to the powers and duties of the Governor, the Attorney  
20 General shall be the chief law officer of the State. It shall be  
21 the duty of the Attorney General to see that the laws of the State  
are uniformly and adequately enforced. The Attorney General

1 shall have direct supervision over every district attorney and  
2 sheriff and over such other law enforcement officers as may be  
3 designated by law, in all matters pertaining to the duties of their  
4 respective offices, and may require any of said officers to make  
5 reports concerning the investigation, detection, prosecution, and  
6 punishment of crime in their respective jurisdictions as to the  
7 Attorney General may seem advisable. Whenever in the  
8 opinion of the

9 Attorney General any law of the State is not being adequately  
10 enforced in any county, it shall be the duty of the Attorney  
11 General to prosecute any violations of law of which the superior  
12 court shall have jurisdiction, and in such cases the Attorney  
13 General shall have all the powers of a district attorney. When  
14 required by the public interest or directed by the Governor, the  
15 Attorney General shall assist any district attorney in the

16 discharge of the duties of that office."

17 California Government Code § 22:

18 " "Process" includes a writ or summons issued in the course of  
19 judicial proceedings of either a civil or criminal nature."

20 California Government Code § 26500:

21 "The district attorney is the public prosecutor, except as  
otherwise provided by law.

1           The public prosecutor shall attend the courts, and within his or  
2           her discretion shall initiate and conduct on behalf of the people  
3           all prosecutions for public offenses."

4 California Government Code § 26502:

5           "The district attorney **shall** draw all indictments and  
6           **informations.**"

7 California Penal Code § 17(d):

8           "A violation of any code section listed in Section 19.8 is an  
9           infraction subject to the procedures described in Sections 19.6  
10          and 19.7 when:

11           (1) The prosecutor files a complaint charging the offense as  
12          an infraction unless the defendant, at the time he or she is  
13          arraigned, after being informed of his or her rights, elects to  
14          have the case proceed as a misdemeanor"

15 California Penal Code § 19:

16           "Except in cases where a different punishment is prescribed by  
17          any law of this state, every offense declared to be a  
18          misdemeanor is punishable by imprisonment in the county jail  
19          not exceeding six months, or by fine not exceeding one  
20          thousand dollars (\$1,000), or by both."

21 California Penal Code § 691(c):

1        "The words "accusatory pleading" include an indictment, an  
2        information, an accusation, and a complaint."

3 California Penal Code § 691(d):

4        "The words "prosecuting attorney" include any attorney,  
5        whether designated as district attorney, city attorney, city  
6        prosecutor, prosecuting attorney, or by any other title, having by  
7        law the right or duty to prosecute, on behalf of the people, any  
8        charge of a public offense."

9 California Penal Code § 740:

10       "Except as otherwise provided by law, all misdemeanors and  
11       infractions must be prosecuted by written complaint under oath  
12       subscribed by the complainant. Such complaint may be verified  
13       on information and belief."

14

15 California Penal Code § 853.9:

16       "(a) Whenever written notice to appear has been prepared,  
17       delivered, and filed by an officer or the prosecuting attorney  
18       with the court pursuant to the provisions of Section 853.6 of  
19       this code, an exact and legible duplicate copy of the notice  
20       when filed with the magistrate, in lieu of a verified complaint,  
21       shall constitute a complaint to which the defendant may plead  
            "guilty" or "nolo contendere."

If, however, the defendant violates his or her promise to appear in court, or does not deposit lawful bail, or pleads other than "guilty" or "nolo contendere" to the offense charged, a complaint shall be filed which shall conform to the provisions of this code and which shall be deemed to be an original complaint; and thereafter proceedings shall be had as provided by law, except that a defendant may, by an agreement in writing, subscribed by him or her and filed with the court, waive the filing of a verified complaint and elect that the prosecution may proceed upon a written notice to appear.

(b) Notwithstanding the provisions of subdivision (a) of this section, whenever the written notice to appear has been prepared on a form approved by the Judicial Council, an exact and legible duplicate copy of the notice when filed with the magistrate shall constitute a complaint to which the defendant

may enter a plea and, if the notice to appear is verified, upon which a warrant may be issued. If the notice to appear is not verified, the defendant may, at the time of arraignment, request that a verified complaint be filed.

California Penal Code § 949:

"The first pleading on the part of the people in the superior court in a felony case is the indictment, information, or the

1 complaint in any case certified to the superior court under  
2 Section 859a. The first pleading on the part of the people in a  
3 misdemeanor or infraction case is the complaint except as  
4 otherwise provided by law. The first pleading on the part of the  
5 people in a proceeding pursuant to Section 3060 of the  
6 Government Code is an accusation."

7 California Penal Code § 950:

8 "The accusatory pleading **must contain**:

- 9 1. The Title of the action, specifying the name of the court to  
10 which the same is presented, and the names of the parties;
- 11 2. A statement of the public offense or offenses charged  
12 therein."

13 California Penal Code § 952:

14 "In charging an offense, each count shall contain, and shall be  
15 sufficient if it contains in substance, a statement that the

16 accused has committed some public offense therein specified.

17 Such statement may be made in ordinary and concise language  
18 without any technical averments or any allegations of matter  
19 not essential to be proved. It may be in the words of the  
20 enactment describing the offense or declaring the matter to be a  
21 public offense, or in any words sufficient to give the accused  
notice of the offense of which he is accused. In charging theft it

1 shall be sufficient to allege that the defendant unlawfully took  
2 the labor or property of another."

3 California Penal Code § 959:

4 "The accusatory pleading is sufficient if it can be understood  
5 therefrom:

6 1. That it is filed in a court having authority to receive it,  
7 though the name of the court be not stated.

8 2. If an indictment, that it was found by a grand jury of the  
9 county in which the court was held, or if an information, that it  
10 was subscribed and presented to the court by the district  
11 attorney of the county in which the court was held.

12 3. If a complaint, that it is made and subscribed by some  
13 natural person and sworn to before some officer entitled to  
14 administer oaths.

15 4. That the defendant is named, or if his name is unknown,  
16 that he is described by a fictitious name, with a statement that  
17 his true name is to the grand jury, district attorney, or  
18 complainant, as the case may be, unknown.

19 5. That the offense charged therein is triable in the court in  
20 which it is filed, except in case of a complaint filed with a  
21 magistrate for the purposes of a preliminary examination.

1           6. That the offense was committed at some time prior to the  
2           filing of the accusatory pleading."

3 California Penal Code § 959.1:

4           (a) Notwithstanding Sections 740, 806, 949, and 959 or any  
5           other law to the contrary, a criminal prosecution may be  
6           commenced by filing an accusatory pleading in electronic form  
7           with the magistrate or in a court having authority to receive it.

8           (b) As used in this section, accusatory pleadings include, but  
9           are not limited to, the complaint, the information, and the  
10          indictment.

11          (c) A magistrate or court is authorized to receive and file an  
12          accusatory pleading in electronic form if all of the following  
13          conditions are met:

14           (1) The accusatory pleading is issued in the name of, and  
15          transmitted by, a public prosecutor or law enforcement agency  
16          filing pursuant to Chapter 5c (commencing with Section 853.5)  
17          or Chapter 5d (commencing with Section 853.9), or by a clerk  
18          of the court with respect to complaints issued for the offenses of  
19          failure to appear, pay a fine, or comply with an order of the  
20          court.

(2) The magistrate or court has the facility to electronically store the accusatory pleading for the statutory period of record retention.

(3) The magistrate or court has the ability to reproduce the accusatory pleading in physical form upon demand and payment of any costs involved.

An accusatory pleading shall be deemed to have been filed when it has been received by the magistrate or court.

When transmitted in electronic form, the accusatory pleading shall be exempt from any requirement that it be subscribed by a natural person. It is sufficient to satisfy any requirement that an accusatory pleading, or any part of it, be sworn to before an officer entitled to administer oaths, if the pleading, or any part of it, was in fact sworn to and the electronic form indicates which parts of the pleading were sworn to and the name of the

officer who administered the oath.

(d) Notwithstanding any other law, a notice to appear issued on a form approved by the Judicial Council may be received and filed by a court in electronic form, if the following conditions are met:

(1) The notice to appear is issued and transmitted by a law enforcement agency prosecuting pursuant to Chapter 5c

1 (commencing with Section 853.5) or Chapter 5d (commencing  
2 with Section 853.9) of Title 3 of Part 2 of this code, or Chapter  
3 2 (commencing with Section 40300) of Division 17 of the  
4 Vehicle Code.

5 (2) The court has all of the following:

6 (A) The ability to receive the notice to appear in electronic  
7 format.

8 (B) The facility to electronically store an electronic copy and  
9 the data elements of the notice to appear for the statutory period  
10 of record retention.

11 (C) The ability to reproduce the electronic copy of the notice  
12 to appear and those data elements in printed form upon demand  
13 and payment of any costs involved.

14 (3) The issuing agency has the ability to reproduce the notice  
15 to appear in physical form upon demand and payment of any

16 costs involved.

17 (e) A notice to appear that is received under subdivision (d) is  
18 deemed to have been filed when it has been accepted by the  
19 court and is in the form approved by the Judicial Council.

20 (f) If transmitted in electronic form, the notice to appear is  
21 deemed to have been signed by the defendant if it includes a  
digitized facsimile of the defendant's signature on the notice to

1 appear. A notice to appear filed electronically under subdivision  
2 (d) need not be subscribed by the citing officer. An  
3 electronically submitted notice to appear need not be verified by  
4 the citing officer with a declaration under penalty of perjury if  
5 the electronic form indicates which parts of the notice are  
6 verified by that declaration and the name of the officer making  
7 the declaration."

8

9 California Vehicle Code § 40513:

10 "(a) Whenever written notice to appear has been prepared,  
11 delivered, and filed with the court, an exact and legible  
12 duplicate copy of the notice when filed with the magistrate, in  
13 lieu of a verified complaint, shall constitute a complaint to  
14 which the defendant may plead "guilty" or "nolo contendere."

15 If, however, the defendant violates his or her promise to

16 appear in court or does not deposit lawful bail, or pleads other  
17 than "guilty" or "nolo contendere" to the offense charged, a  
18 complaint shall be filed that shall conform to Chapter 2  
19 (commencing with Section 948) of Title 5 of Part 2 of the Penal  
20 Code, which shall be deemed to be an original complaint, and  
21 thereafter proceedings shall be had as provided by law, except  
that a defendant may, by an agreement in writing, subscribed by

1 him or her and filed with the court, waive the filing of a  
2 verified complaint and elect that the prosecution may proceed  
3 upon a written notice to appear.

4 (b) Notwithstanding subdivision (a), whenever the written  
5 notice to appear has been prepared on a form approved by the  
6 Judicial Council, an exact and legible duplicate copy of the  
7 notice when filed with the magistrate shall constitute a  
8 complaint to which the defendant may enter a plea and, if the  
9 notice to appear is verified, upon which a warrant may be  
10 issued. If the notice to appear is not verified, the defendant  
11 may, at the time of arraignment, request that a verified  
12 complaint be filed. In the case of an infraction violation in  
13 which the defendant is a minor, the defendant may enter a plea  
14 at the arraignment upon a written notice to appear.

15 Notwithstanding any other provision of law, in the case of an  
16 infraction violation, no consent of the minor is required prior to  
17 conducting the hearing upon a written notice to appear."

**Form 6. Certificate of Compliance With Type-Volume Limitation,  
Typeface Requirements, and Type Style Requirements**

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because:

this brief contains 10916 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), or

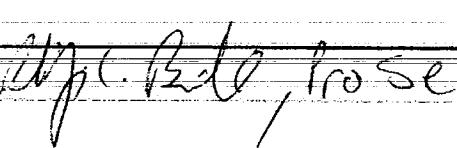
this brief uses a monospaced typeface and contains \_\_\_\_\_ lines of text, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

this brief has been prepared in a proportionally spaced typeface using (*state name and version of word processing program*) OpenOffice Version 3.3.0 (*state font size and name of type style*) 14-point minimum, Times New Roman, or

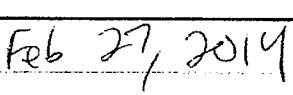
this brief has been prepared in a monospaced spaced typeface using (*state name and version of word processing program*) \_\_\_\_\_ with (*state number of characters per inch and name of type style*) \_\_\_\_\_

---

Signature Philip C. Bikle 

Attorney for [redacted]

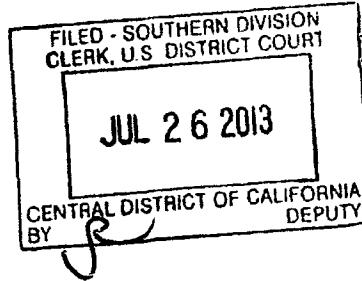
Date Feb 27, 2014



I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY FIRST CLASS MAIL POSTAGE PREPAID, TO ALL COUNSEL ~~Plaintiff~~ & ~~Def~~ (OR PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF RECORD IN THIS ACTION ON THIS DATE.

DATED: 7-26-13

DEPUTY CLERK



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

PHILIP C. BIKLE, ) Case No. SACV 13-0911-DOC (JPR)

Plaintiff, ) ORDER DISMISSING COMPLAINT WITH  
vs. ) PREJUDICE

DOE 1-9 et al., )

Defendants. )

Plaintiff filed this civil rights action pro se on June 19, 2013, after having been granted leave to proceed in forma pauperis. He alleges violations of 42 U.S.C. §§ 1983, 1985(3), and 1986 as well as various state tort-law claims stemming from when he was issued a traffic ticket, appeared in court to fight

the ticket, and had various motions he filed either denied or not heard by the state superior court. (See Compl. at 4-11.) He names as defendants "Traffic Supervisor Martha," Commissioner Michael Pearce, Judge Deborah Sanchez, the Superior Court of the State of California at Bellflower, and unnamed employees of the superior court Does 1-9. Plaintiff seeks injunctive relief "to halt all systemic acts of denial of due process against members

1 of the public," compensatory damages, and punitive damages.  
2 (Compl. at 36-37.)

3 After screening the Complaint under 28 U.S.C. § 1915(e)(2)  
4 prior to ordering service, the Court finds that it is frivolous  
5 and fails to state civil rights violations upon which relief  
6 might be granted. Because it is clear that none of the  
7 deficiencies of the Complaint are capable of being cured by  
8 amendment, it is dismissed without leave to amend. See Cook,  
9 Perkiss & Liehe, Inc. v. N. Cal. Collection Serv., Inc., 911 F.2d  
10 242, 247 (9th Cir. 1990) (per curiam); cf. Lopez v. Smith, 203  
11 F.3d 1122, 1130-31 (9th Cir. 2000) (en banc) (holding that pro se  
12 litigant must be given leave to amend complaint unless absolutely  
13 clear deficiencies cannot be cured by amendment).

14 **STANDARD OF REVIEW**

15 The Court's screening of a complaint under 28 U.S.C.  
16 § 1915(e)(2) is governed by the following standards. A complaint  
17 may be dismissed as a matter of law for failure to state a claim  
18 "where there is no cognizable legal theory or an absence of  
19 sufficient facts alleged to support a cognizable legal theory."  
20 Shroyer v. New Cingular Wireless Servs., Inc., 622 F.3d 1035,  
21 1041 (9th Cir. 2010); O'Neal v. Price, 531 F.3d 1146, 1151 (9th  
22 Cir. 2008). In considering whether a complaint states a claim, a  
23 court must accept as true all the factual allegations in it.  
24 Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173  
25 L. Ed. 2d 868 (2009); Hamilton v. Brown, 630 F.3d 889, 892-93  
26 (9th Cir. 2011). The court need not accept as true, however,  
27 "allegations that are merely conclusory, unwarranted deductions  
28 of fact, or unreasonable inferences." In re Gilead Scis. Sec.

1     Litig., 536 F.3d 1049, 1055 (9th Cir. 2008); see also Shelton v.  
2     Chorley, 487 F. App'x 388, 389 (9th Cir. 2012). The court also  
3     need not accept allegations that are "fantastic or delusional,"  
4     "fanciful," or "rise to the level of the irrational or wholly  
5     incredible." Denton v. Hernandez, 504 U.S. 25, 32-33, 112 S. Ct.  
6     1728, 1733, 118 L. Ed. 2d 340 (1992). Although a complaint need  
7     not include detailed factual allegations, it "must contain  
8     sufficient factual matter, accepted as true, to 'state a claim to  
9     relief that is plausible on its face.'" Iqbal, 556 U.S. at 678  
10    (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570, 127 S.  
11    Ct. 1955, 1974, 167 L. Ed. 2d 929 (2007)). A claim is facially  
12    plausible when it "allows the court to draw the reasonable  
13    inference that the defendant is liable for the misconduct  
14    alleged." Iqbal, 556 U.S. at 678. "A document filed pro se is  
15    to be liberally construed, and a pro se complaint, however  
16    inartfully pleaded, must be held to less stringent standards than  
17    formal pleadings drafted by lawyers." Erickson v. Pardus, 551  
18    U.S. 89, 94, 127 S. Ct. 2197, 2200, 167 L. Ed. 2d 1081 (2007)  
19    (internal quotation marks and citations omitted).

20    Moreover, pursuant to Federal Rule of Civil Procedure  
21    12(h) (3), the Court must dismiss an action "[i]f the court  
22    determines at any time that it lacks subject-matter jurisdiction  
23    . . . ." See also Fed. R. Civ. P. 12(b) (1) (providing that  
24    complaint may be dismissed for lack of subject-matter  
25    jurisdiction). Federal courts lack subject-matter jurisdiction  
26    to consider complaints that are "patently insubstantial" or  
27    frivolous. See Neitzke v. Williams, 490 U.S. 319, 327 n.6, 109  
28    S. Ct. 1827, 1832 n.6, 104 L. Ed. 2d 338 (1989); see also

1     Franklin v. Murphy, 745 F.2d 1221, 1227 n.6 (9th Cir. 1984)  
2     (noting that a "complaint that is obviously frivolous does not  
3     confer federal subject matter jurisdiction . . . and may be  
4     dismissed *sua sponte*" (citation and internal quotation marks  
5     omitted)); Hagans v. Lavine, 415 U.S. 528, 537-38, 94 S. Ct.  
6     1372, 1379, 39 L. Ed. 2d 577 (1974) (a federal claim so  
7     insubstantial as to be patently without merit cannot serve as  
8     basis for federal jurisdiction). A frivolous complaint is one  
9     that "'lacks an arguable basis in either law or in fact.'"   
10    Martin v. Sias, 88 F.3d 774, 775 (9th Cir. 1996) (quoting  
11    Neitzke, 490 U.S. at 325).

## **ALLEGATIONS OF THE COMPLAINT**

13 Plaintiff alleges that sometime between January 1 and  
14 February 7, 2012, "Court employee Doe1" filed a notice for  
15 Plaintiff to appear in traffic court on "a criminal complaint";  
16 the notice was signed by "Officer A. Santos, of the Los Angeles  
17 Sheriff's Department, at Lakewood Station," who was "not licensed  
18 to practice law" and "not authorized, by California law, to  
19 initiate criminal prosecution in the name of the People of the  
20 State of California." (Compl. at 4.) Plaintiff alleges that he  
21 thereafter mailed "an informal request for discovery to the  
22 District Attorney's office at Bellflower" and filed a "motion to  
23 quash for lack of a Verified Complaint" in the superior court.  
24 (*Id.*) He also filed a "motion to dismiss on the grounds that the  
25 Peace Officer and Clerk of Court are practicing law without a  
26 license." (*Id.*) Plaintiff noticed his motions for June 6, 2012,  
27 at 1 p.m. in Department 001 of the superior court. (*Id.*)  
28 Unnamed court employees either failed to schedule hearings for

1 Plaintiff's motions or failed to provide him notice of scheduled  
2 hearing dates. (Compl. at 5.) "On June 1st, 2012 [Plaintiff]  
3 attempted to file a peremptory challenge against Commissioner  
4 Michael Pearce" but "[a] female court employee, Doe6, refused to  
5 file [his] peremptory challenge around 2:20pm." (Id.)

6 Thereafter,

7 Bikle made an appearance at Bellflower Courthouse on  
8 June 6, 2012. Bikle did not find his name on the list of  
9 scheduled appearances posted outside of Department 001.  
10 Bikle filed 1 original written peremptory challenge with  
11 the Bellflower Courthouse and Bikle kept 1 original  
12 written peremptory challenge that had been stamped as  
13 received by the court, on June 6, 2012, before the  
14 proposed hearing time of 1:00PM, as Bikle did not know if  
15 a hearing would be held since two separate Deputy Clerks  
16 of Court had specifically told him that they did not have  
17 him scheduled for any thing other than an arraignment on  
18 August 1, 2012. Bikle was told by the first Deputy Clerk  
19 that he could go into Department 001 but that he would  
20 not be heard with out being scheduled.

21 On June 7, 2012 Traffic Supervisor "Martha" issued  
22 process in the form of a "correspondence inquiry" to  
23 Commissioner Michael Pearce.

24 This correspondence inquiry indicates that the  
25 Plaintiff was requesting "motion to quash & hearing for  
26 6-6-12". The correspondence inquiry did not indicate  
27 that Plaintiff had provided a stipulation to have his  
28 matters heard before Commissioner Pearce. In addition,

1 there was no mention of Plaintiff's motion to dismiss on  
2 the grounds that the Peace Officer and Clerk of Court  
3 were practicing law without a license. Martha indicated  
4 that the alleged defendant failed to appear on June 6,  
5 2012. The correspondence inquiry also indicates that  
6 Commissioner Pearce denied the motion to quash on June 7,  
7 2012.

8 Commissioner Pearce was not authorized by law to  
9 deny the motion to quash.

10 Pursuant to California State Constitution Article 6  
11 Section 21, Commissioner Pearce had not obtained a  
12 stipulation from Bikle at the time of his action.

13 (Compl. at 5-6.) Plaintiff goes on to allege that he served  
14 several "informal requests for discovery" on the District  
15 Attorney's office in Bellflower and later a motion to compel  
16 discovery, none of which received a response, and that he filed  
17 in the superior court a "petition for a writ of Mandate and a  
18 writ of Prohibition," which was "lost" by court staff. (Compl.  
19 at 6-7.) Regarding the alleged loss of his motion papers and  
20 failure to schedule a hearing on his motions, Petitioner then  
21 makes the following allegations:

22 On August 1, 2012, Bikle appeared at Bellflower  
23 Courthouse, 1PM, in department 001.

24 At this time, Commissioner Pearce failed to produce  
25 the peremptory challenge, described earlier, from the  
26 case file.

27 Does did one of the following things to the  
28 peremptory challenge, which resulted in Pearce's failure

1 to produce the filed peremptory challenge: Steal, remove,  
2 or secrete; Destroy, mutilate, or deface; Alter or  
3 falsify. Bikle does not currently have enough facts to  
4 determine which of the listed actions occurred to result  
5 in the absence of the peremptory challenge from the case  
6 file, but it is clear that one of the actions must have  
7 taken place, as the record could not be found.

8 On August 1, 2012 Bikle appeared at Bellflower  
9 Courthouse, in Department 006. This appearance was the  
10 result of disqualifying Commissioner Pearce. Before  
11 Bikle's case file was transferred from Department 001  
12 Bikle had a discussion with Judge Sanchez, which was not  
13 on the record. During this discussion Bikle indicated  
14 concern about getting a ruling on the motion to dismiss  
15 and that the motion to quash denial was done with out  
16 authority. When Bikle's case file arrived Judge Sanchez  
17 excused herself so that she could read over it. She came  
18 back within 20 minutes, at which point the record  
19 started.

20 Bikle was exhausted due to only getting about 5  
21 hours of sleep the night before as a result of anxiety  
22 and pain. Bikle was also in extreme pain at this  
23 appearance.

24 Judge Sanchez immediately asked if Bikle wanted to  
25 plead not guilty when the record started.

26 Judge Sanchez did not rule on the Document #1001  
27 Version 1.001 titled, "Motion to dismiss on the grounds  
28 that the Peace Officer and Clerk of Court are practicing

1 law without a license" before jumping ahead to ask for a  
2 plea. Judge Sanchez did not rule on the Document #1001  
3 Version 1.001 during the first, second, third, or fourth  
4 appearances of Bikle.

5 On August 1, 2012 Bikle requested for a [sic] copy  
6 of the verified complaint pursuant to California Penal  
7 Code 988.

8 Judge Sanchez gave the non-responsive comment, "The  
9 judicial counsel form is an appropriate method to charge  
10 you with the vehicle code sections. So what plea did you  
11 want to enter?" and changed the subject by asking what  
12 plea I wanted to enter. Judge Sanchez did not provide  
13 Bikle with a copy of the alleged complaint upon my  
14 request.

15 Bikle was exhausted and requested another week to  
16 respond.

17 Judge Sanchez did not dismiss the case on any of the  
18 occasions that Bikle raised oral argument regarding the  
19 points contained within Document #1001 Version 1.001.

20 Bikle made numerous attempts to get the case  
21 dismissed as there had clearly been no initiation of  
22 prosecution by an individual who was authorized to  
23 initiate criminal proceedings in the name of the People  
24 of the State of California.

25 (Compl. at 7-8.) Plaintiff thereafter alleges that he moved to  
26 recuse Judge Sanchez, who "attempted to get Bikle to be a witness  
27 against himself," and that his "petition for writ of mandamus"  
28 was denied, but a clerk at the Stanley Mosk Courthouse in Los

1 Angeles "failed to provide [Plaintiff] with prompt notice of the  
2 decision" denying his petition. (Compl. at 9.) He alleges that  
3 his case was ultimately dismissed, "but none of the proposed  
4 orders which Bikle had included with Document #1001 Version 1.001  
5 and Document #1013 Version 1.000 were used[,] [b]oth of which  
6 indicated that the prosecuting attorney had not initiated  
7 prosecution." (*Id.*) Plaintiff asserts that "[a]t no point in  
8 time did the record contain evidence of a final agency  
9 determination in regards to the contested issue of the right to  
10 travel and property use rather than the alleged operation of a  
11 motor vehicle," and "[t]he jurisdiction of the court was not  
12 invoked, at any time, by an individual authorized to initiate  
13 criminal proceedings in the name of the People of the State of  
14 California." (Compl. at 10.)

15 Plaintiff asserts 22 causes of action against unnamed court  
16 clerks Does 1-9, "Traffic Supervisor Martha," Commissioner  
17 Pearce, Judge Sanchez, and the Bellflower superior court, for  
18 violations of his Fifth and 14th amendment rights to due process  
19 and equal protection and for conspiracy to deprive him of his  
20 constitutional rights under 42 U.S.C. §§ 1985(3) and 1986; he  
21 also brings a separate cause of action against all Defendants  
22 under "California tort law." (Compl. at 11-36.) Plaintiff  
23 alleges that Defendants' actions caused him "Physical pain and  
24 suffering, including but not limited to exacerbation of  
25 preexisting conditions"; "Emotional pain and suffering, including  
26 but not limited to stress and anxiety"; "A substantial loss of  
27 the enjoyment of life"; "humiliation"; "impairment of  
28 relationships"; "Insomnia and nightmares"; "Chronic headaches";

1 and "Development of fears and phobias." (Id.)

2 **DISCUSSION**

3 Plaintiff's Complaint is frivolous and fails to state a  
4 claim upon which relief may be granted. Leaving aside  
5 Plaintiff's claims that his traffic citation was issued by a  
6 police officer (not named as a Defendant in this action) and  
7 court clerk "practicing law without a license" (Compl. at 4),<sup>1</sup>  
8 the entirety of the Complaint concerns actions taken by judges  
9 and other court staff in the course of their judicial duties.  
10 Those Defendants are absolutely immune from damages suits for  
11 actions taken within their capacity as judges or court employees,  
12 and all of Plaintiff's monetary claims against them must  
13 therefore be dismissed with prejudice. See Schucker v. Rockwood,  
14 846 F.2d 1202, 1204 (9th Cir. 1988) (per curiam) ("Judges are  
15 absolutely immune from damages actions for judicial acts taken  
16 within the jurisdiction of their courts."); Mireles v. Waco, 502  
17 U.S. 9, 9, 112 S. Ct. 286, 287, 116 L. Ed. 2d 9 (1991) (per  
18 curiam) ("A long line of this Court's precedents acknowledges  
19

20         <sup>1</sup> In People v. Staph, 28 Cal. App. 4th 1756, 34 Cal. Rptr.  
21 2d 351 (1994), the California Court of Appeal held that the traffic  
22 courts' procedure of allowing court clerks to file criminal  
23 complaints for failure to appear for traffic offenses did not  
24 violate the California Constitution's separation-of-powers  
25 doctrine. The California Supreme Court later denied review and  
ordered the opinion not officially published. 34 Cal. Rptr. 2d 351  
(1995). See also People v. Carlucci, 23 Cal. 3d 249, 590 P.2d 15  
(1979) (holding that conducting traffic-infraction hearings without  
prosecutor does not deprive traffic-court defendants of due process  
of law). Regardless of the legality of the state's traffic-  
violation procedures under state law, however, Plaintiff has cited  
no authority, and the Court has found no authority, suggesting that  
those procedures violate any federal constitutional requirement.

1 that, generally, a judge is immune from a suit for money  
2 damages."); Miller v. Barilla, 549 F.2d 648, 648-49 (9th Cir.  
3 1977) (affirming district court's dismissal of § 1983 damages  
4 suit based on absolute immunity for trial judge, who allegedly  
5 sentenced plaintiff in breach of plea bargain), overruled on  
6 other grounds by Glover v. Tower, 700 F.2d 556, 559 (9th Cir.  
7 1983); see also In re Castillo, 297 F.3d 940, 952 (9th Cir. 2002)  
8 (explaining that court clerks enjoy "absolute quasi-judicial  
9 immunity . . . for purely administrative acts - acts which taken  
10 out of context would appear ministerial, but when viewed in  
11 context are actually a part of the judicial function"); Mullis v.  
12 U.S. Bankr. Ct., 828 F.2d 1385, 1390 (9th Cir. 1987) (holding  
13 that bankruptcy clerks have absolute quasi-judicial immunity from  
14 suit for refusing to accept amended complaint because such  
15 actions relate to integral part of judicial process).

16 To the extent Plaintiff asserts that Commissioner Pearce (or  
17 any other Defendant) was not authorized to hear his case and thus  
18 may have been acting outside his judicial authority (see Compl.  
19 at 6), that argument is unavailing. Judicial immunity is  
20 unavailable only when a judge acts in "clear absence of all  
21 jurisdiction" or performs an act that is not judicial in nature.

22 See Asheiman v. Pope, 793 F.2d 1072, 1075 (9th Cir. 1986). For  
23 purposes of determining judicial immunity, a clear absence of all  
24 jurisdiction means a clear lack of all subject-matter  
25 jurisdiction. See Mullis, 828 F.2d at 1389. It is immaterial  
26 that the judge may otherwise have acted in error or in excess of  
27 his authority. See Stump v. Sparkman, 435 U.S. 349, 356, 98 S.  
28 Ct. 1099, 1104, 55 L. Ed. 2d 331 (1978). Here, the superior

1 court was authorized by statute to preside over traffic  
2 infractions and misdemeanors. See Cal. Penal Code §§ 19.7,  
3 1462.2. Plaintiff's traffic infraction and all related  
4 proceedings were therefore within the statutory jurisdiction of  
5 the superior court. Commissioner Pearce was an officer of the  
6 superior court with full judicial powers and duties relating to  
7 traffic infractions. See Cal. Gov't Code § 72190; see also  
8 Branson v. Martin, 56 Cal. App. 4th 300, 304-05, 65 Cal. Rptr. 2d  
9 401, 403-04 (1997). Accordingly, his limited conduct in denying  
10 Plaintiff's motion to quash was well within his jurisdiction, and  
11 he is entitled to judicial immunity from Plaintiff's claims.  
12 Even if Commissioner Pearce's ruling was in error or exceeded his  
13 jurisdiction, as the Ninth Circuit has observed, "a mistake or  
14 act in excess of jurisdiction does not abrogate judicial  
15 immunity, even if it results in 'grave procedural errors.'"  
16 Mullis, 828 F.2d at 1390 (quoting Stump, 435 U.S. at 359). Thus,  
17 Plaintiff is not entitled to money damages from any of the court  
18 employees, as all are judicially immune. See Jackson v. La.  
19 Tech. Univ., Civil Action No. 11-0524, 2011 WL 6749014, at \*6-10,  
20 \*12 (W.D. La. Nov. 22, 2011) (dismissing with prejudice § 1983  
21 claims against judge for alleged misconduct in failing to set  
22 hearings and denying plaintiff's various requests and motions in  
23 traffic-citation case and against court clerks and court reporter  
24 for failing to file motions and pleadings, failing to set motions  
25 for hearing, and allegedly unlawfully altering hearing  
26 transcripts because challenged actions were judicial or  
27 administrative in nature and defendants therefore absolutely  
28 immune from suit), accepted by 2011 WL 6749044 (W.D. La. Dec. 22,

1 2011).

2 Plaintiff also has not demonstrated entitlement to  
3 injunctive relief "to halt all systemic acts of denial of due  
4 process against members of the public in the County of Los  
5 Angeles at the Superior Court of California in Bellflower."  
6 (Compl. at 36; see also Compl. at 2.) Plaintiff cannot seek an  
7 injunction on behalf of "members of the public" because pro se  
8 litigants have no authority to represent anyone other than  
9 themselves. See Simon v. Hartford Life, Inc., 546 F.3d 661, 664  
10 (9th Cir. 2008) ("[T]he privilege to represent oneself pro se  
11 provided by [28 U.S.C.] § 1654 is personal to the litigant and  
12 does not extend to other parties or entities."). Moreover,  
13 Plaintiff fails to state which alleged constitutional violation  
14 justifies injunctive relief, the nature of the injunctive relief  
15 sought, or any other facts that would support a finding that  
16 injunctive relief is appropriate. Thus, his claim for injunctive  
17 relief must be dismissed. See Iqbal, 129 S. Ct. at 1949  
18 (complaint is insufficient if it "tenders naked assertions devoid  
19 of further factual development" (citation, internal quotation  
20 marks, and brackets omitted)).

21 Plaintiff also cannot sue the superior court itself because  
22 it is not a "person" within the meaning of § 1983; rather, it is  
23 an arm of the state and is immune from suit unless the state has  
24 expressly waived immunity. See Simmons v. Sacramento Cnty.  
25 Superior Court, 318 F.3d 1156, 1161 (9th Cir. 2003) ("Plaintiff  
26 cannot state a claim against the Sacramento County Superior Court  
27 (or its employees), because such suits are barred by the Eleventh  
28 Amendment."); Greater L.A. Council on Deafness, Inc. v. Zolin,

1 812 F.2d 1103, 1110 (9th Cir. 1987) ("We conclude that a suit  
2 against the Superior Court is a suit against the State, barred by  
3 the eleventh amendment."). Typically, "[w]aiver of Eleventh  
4 Amendment immunity by a state will be found only where stated by  
5 the most express language or by such overwhelming implication  
6 from the text [of a state statute] as [will] leave no room for  
7 any other reasonable construction." Micomonaco v. Washington, 45  
8 F.3d 316, 319 (9th Cir. 1995) (internal quotation marks and  
9 citation omitted). There is no evidence that the superior court  
10 has waived its 11th Amendment immunity here. See BV Eng'g v.  
11 Univ. of Cal., L.A., 858 F.2d 1394, 1396 (9th Cir. 1988) (noting  
12 that California has not waived its 11th Amendment immunity to  
13 suit in federal court); Peltier-Ochoa v. Miele, No. EDCV  
14 12-0663-JAK (RNB), 2012 WL 4107924, at \*1 (C.D. Cal. Aug. 28,  
15 2012) (noting that California has not waived 11th Amendment  
16 immunity, nor has "Congress . . . abrogated State sovereign  
17 immunity against suits under 42 U.S.C. § 1983"). Accordingly,  
18 Plaintiff's claims against the superior court must be dismissed.  
19 See Mahaley v. Baker, No. EDCV 12-01461-PSG(OP), 2013 WL 2480683,  
20 at \*6 (C.D. Cal. June 10, 2013) (dismissing with prejudice § 1983  
21 claim against superior court because superior court is immune  
22 from suit under 11th Amendment).

23 Further, to the extent Plaintiff challenges the superior  
24 court's denials of any of his motions, the Court lacks subject-  
25 matter jurisdiction to hear such claims. Doing so would  
26 contravene the Rooker-Feldman doctrine, derived from two U.S.  
27 Supreme Court opinions, which provides that federal district  
28 courts may exercise only original jurisdiction; they may not

1 exercise appellate jurisdiction over state-court decisions. See  
2 Dist. of Columbia Court of Appeals v. Feldman, 460 U.S. 462,  
3 482-86, 103 S. Ct. 1303, 1315-17, 75 L. Ed. 2d 206 (1983); Rooker  
4 v. Fid. Trust Co., 263 U.S. 413, 415-16, 44 S. Ct. 149, 150, 68  
5 L. Ed. 362 (1923). Review of state-court decisions may be  
6 conducted only by the U.S. Supreme Court. See Feldman, 460 U.S.  
7 at 476, 486; Rooker, 263 U.S. at 416; see also 28 U.S.C. § 1257.  
8 Rooker-Feldman bars "cases brought by state-court losers  
9 complaining of injuries caused by state-court judgments rendered  
10 before the district court proceedings commenced and inviting  
11 district court review and rejection of those judgments." Exxon  
12 Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284, 125  
13 S. Ct. 1517, 1521-22, 161 L. Ed. 2d 454 (2005). To the extent  
14 Plaintiff asks this Court to review and reverse the state court's  
15 decisions denying any of his motions, his § 1983 action is  
16 barred. In any event, the charge against Plaintiff was  
17 ultimately dismissed, according to the Complaint. (Compl. at 9.)

18 Plaintiff also has not pleaded any facts to support a claim  
19 under §§ 1985(3) or 1986. Section 1985(3) prohibits conspiracies  
20 to deprive "any person or persons" of equal protection under the  
21 laws, equal privileges and immunities under the laws, or the  
22 right to vote. Any party injured as a result of a violation of  
23 § 1985 "may have an action for the recovery of damages,  
24 occasioned by such injury or deprivation, against any one or more  
25 of the conspirators." 42 U.S.C. § 1985(3).

26 To state a claim under § 1985(3), a plaintiff must allege  
27 "(1) that some racial, or perhaps otherwise class-based,  
28 invidiously discriminatory animus [lay] behind the conspirators'

1 action, . . . and (2) that the conspiracy aimed at interfering  
2 with rights that are protected against private, as well as  
3 official, encroachment." Bray v. Alexandria Women's Health  
4 Clinic, 506 U.S. 263, 267-68, 113 S. Ct. 753, 758, 122 L. Ed. 2d  
5 34 (1993) (§ 1985(3)) (citations and internal quotations  
6 omitted). "[T]he plaintiff must state specific facts to support  
7 the existence of the claimed conspiracy." Olsen v. Idaho State  
8 Bd. of Med., 363 F.3d 916, 929 (9th Cir. 2004) (citation and  
9 internal quotations omitted).

10 To state a claim for conspiracy to violate his right to  
11 equal protection, Plaintiff must allege facts showing that he was  
12 intentionally treated differently from others similarly situated  
13 and that there was no rational basis for the difference in  
14 treatment. See Village of Willowbrook v. Olech, 528 U.S. 562,  
15 564, 120 S. Ct. 1073, 1074, 145 L. Ed. 2d 1060 (2000); Barren v.  
16 Harrington, 152 F.3d 1193, 1194-95 (9th Cir. 1998). Conclusory  
17 allegations will not suffice. See Iqbal, 129 S. Ct. at 1949;  
18 Karim-Panahi v. L.A. Police Dep't, 839 F.2d 621, 626 (9th Cir.  
19 1988) (affirming dismissal of § 1985(3) claim containing "legal  
20 conclusions but no specification of any facts to support the  
21 claim of conspiracy").

22 Plaintiff alleges no facts whatsoever to support any of the  
23 above requirements. Plaintiff's § 1985 claims must therefore be  
24 dismissed.

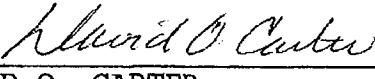
25 Plaintiff's § 1986 claim must also be dismissed. A claim  
26 under § 1986 requires as a prerequisite a violation of § 1985.  
27 Trerice v. Pedersen, 769 F.2d 1398, 1403 (9th Cir. 1985).  
28 Because Plaintiff has not alleged a valid § 1985 claim, he has

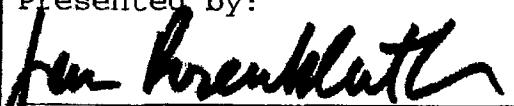
1 also failed to state a claim under § 1986.

2 Finally, because Plaintiff's federal claims all must be  
3 dismissed, Plaintiff's state-law tort claims must be dismissed as  
4 well. A court may exercise supplemental jurisdiction over a  
5 state-law claim if a plaintiff raises a cognizable federal claim  
6 that is substantial enough to confer federal jurisdiction and  
7 shares a common nucleus of operative fact with the state claim.  
8 Brady v. Brown, 51 F.3d 810, 816 (9th Cir. 1995); see 28 U.S.C.  
9 § 1367. If the federal claim is dismissed before trial, the  
10 state claim should be dismissed as well. United Mine Workers of  
11 Am. v. Gibbs, 383 U.S. 715, 726, 86 S. Ct. 1130, 1139, 16 L. Ed.  
12 2d 218 (1966). Here, because the Court has dismissed all of  
13 Plaintiff's federal claims for failure to state a claim, his  
14 state-law tort claims must also be dismissed.

15 Because Plaintiff's Complaint is frivolous and it is  
16 absolutely clear that its deficiencies cannot be cured by  
17 amendment, the Court hereby ORDERS that the Complaint is  
18 dismissed with prejudice.

19  
20 DATED: July 24, 2013

  
DAVID O. CARTER  
U.S. DISTRICT JUDGE

21  
22 Presented by:  
23  


24  
25 Jean Rosenbluth  
U.S. Magistrate Judge  
26  
27  
28